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CONSENT DECREES

IN RE: United States v. Allied Corporation, et al., Civil No. C-83-5898 FMS (N.D. Calif.); and United States v. Chemical & Pigment Co., et al., Civil No. C-83-5896 FMS (N.D. Calif.)

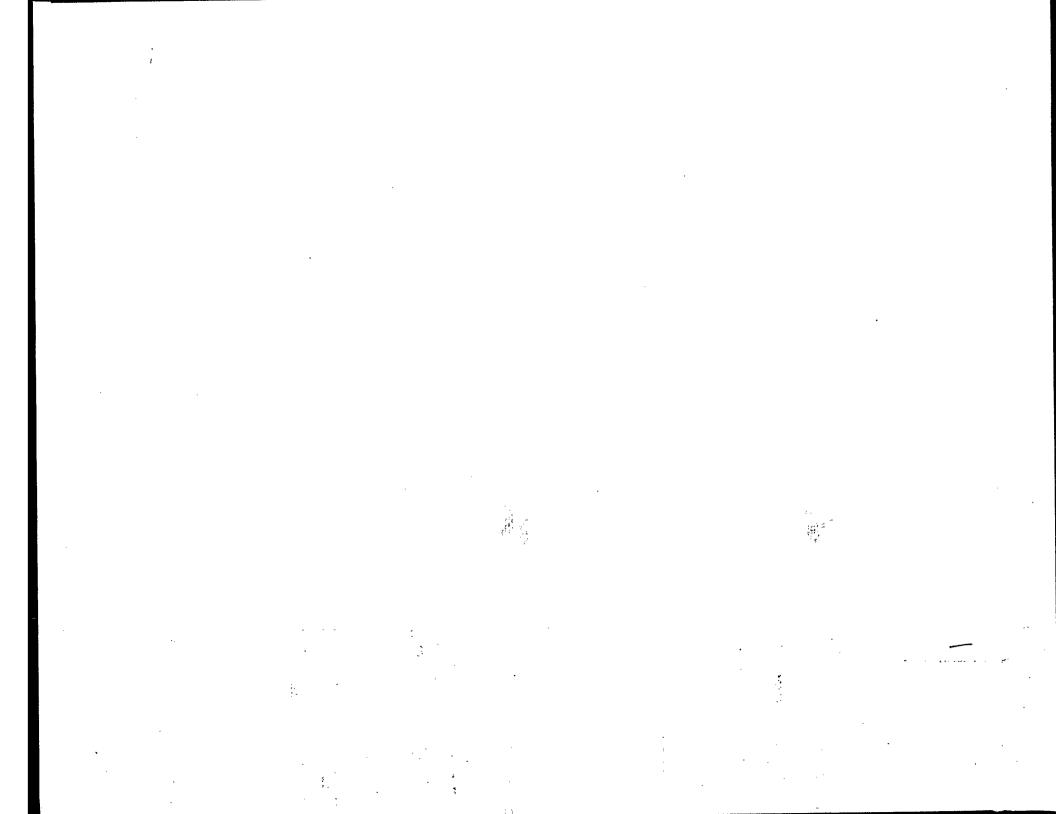
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CONSENT DECREES

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<u>United States v. Chemical & Pigment, et al.</u>, Civil No. C-83-5896 FMS (N.D. Calif.)

<u>Tab</u>	<u>Party</u>
1	Allied-Signal, Inc. (formerly Allied Corporation) (Filed 10 April 1991)
2	Chemical & Pigment Company; O.E. Cooper; ESI Chemicals, Incapend Earth Sciences, Inc. (Filed 5 November 1991)
3	Getty Oil Company (Filed 17 October 1990)
4	Sacramento Northern Railroad Company (Filed 5 November 1994)
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UNITED STATES DISTRICT CRECEIVED FOR NORTHERN DISTRICT OF CALIFORNIA

DEC 2 1 1990

UNITED STATES OF AMERICA,	RICHARD W. WIEKING CLERK, U.S. DISTRICT COURT MORTHERN DISTRICT OF CAUSORIUS
Plaintiff,	northern district of California
v. (Civil Action No. 83-5898 FMS
)	Civil Action No. 83-5896 FMS
ALLIED CORPORATION, et al	(CONSOLIDATED CASES)
Defendants, AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS UNITED STATES OF AMERICA, Plaintiff, V. CHEMICAL & PIGMENT COMPANY,	CONSENT DECREE
et al.))
Defendants)
AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIM))

CONSENT DECREE

This Consent Decree is entered into this day of December, 1990, and is made in light of the following facts:

I. Recitals

Plaintiff, the United States of America (the "United States"), by the authority of the Attorney General of the United States and at the request of the Department of the Navy, filed a complaint and amended complaints against Allied

Corporation (now Allied-Signal Inc.) under, <u>inter alia</u>, Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") of 1980, 42 U.S.C. § 9601 <u>et seq</u>, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), P.L. No. 99-499, 100 Stat. 1613 (1986), seeking to recover, among other things, costs previously incurred and to be incurred in responding to the alleged release and threatened release of hazardous substances on parcels of property that are now part of the Naval Weapons Station ("NWS") in Concord, California.

- B. The United States also alleged damages to natural resources at the NWS and seeks to obtain compensation for such damages under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).
 - C. In the complaint and amended complaints the United States alleges, among other things, that there were releases of hazardous substances on Parcels 571, 572 and 581 at the NWS for which Allied is allegedly responsible. Allied contends that the Navy is responsible for some or all of those releases and has counterclaimed against the United States in connection therewith. In addition, those and similar allegations are the subject of cross-claims, counterclaims and third party complaints by and among the other parties to this action and the companion action, including claims relating to adjacent property owned by Atchison, Topeka, and Santa Fe Railway Company, Southern Pacific Transportation Company; and Sacramento Northern Railroad.

- D. The United States alleges that the releases to which paragraph I.C. above refers caused and will cause the incurrence of response costs by the United States.
- E. The United States also alleged claims in nuisance and trespass at the NWS and seeks to obtain injunctive relief requiring Allied to undertake remediation to prevent the release and threatened release of hazardous substances onto the NWS from adjacent Allied property.
- F. Allied denies it is liable to the United States for any alleged releases on any parcels of land at the NWS or anywhere else.
- G. The United States has brought suit against others in the companion action alleging that it has incurred and will incur further response costs as a result of the release of hazardous substances on parcels 571, 572, 573, 574, 575, 576, and 579D of the NWS. Defendants in the companion action have asserted claims against Allied and Allied has asserted claims against them as well as against the United States.
- H. The United States Department of the Navy has selected a Final Remedial Action Plan ("FRAP") to address hazardous substance contamination on the litigation sites. The United States represents that it has submitted the FRAP to the appropriate federal and state agencies for review and comment and that no agency has objected to the FRAP.
- . I. The United States Department of the Navy agrees that all funds paid by Allied in settlement of its alleged

liability will be paid into the Defense Environmental Response Account which has been and will be used to design and implement the remedial activities selected and set forth in the FRAP relative to the litigation sites, unless ordered to do otherwise by a non-appealable order of a court of appropriate jurisdiction (or a federal or state agency with appropriate jurisdiction) in which event such funds will be used for any alternate remedial activities that may be required. No provision of this Consent Decree shall be interpreted as a commitment or requirement that the Department of the Navy obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

- J. The United States and Allied desire to settle all of these matters fully and completely without incurring further legal expenses or the delay and risks that would be involved in trying these matters.
- K. This settlement shall not be construed in any way to be an admission of fault or liability by either the United States or Allied for any purpose.
- L. Pursuant to Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), and Part 300, Subpart G of the National Contingency Plan ("NCP"), 40 C.F.R. § 300.600(b)(3), the Secretary of Defense is the Federal natural resource trustee for the litigation parcels and the NWS. His authority as trustee for natural resources at the NWS, Concord, has been delegated within the Navy to the Assistant Secretary of the Navy for Installations and Environment.

M. Allied and the United States have stipulated and agreed to the making and entry of this Consent Decree.

Therefore, it is hereby agreed by and between the United States and Allied and hereby ordered, adjudged and decreed as follows:

II. <u>Definitions</u>

- A. "Allied" refers to Allied-Signal Inc., i.e., that corporation organized under the laws of Delaware, which is a defendant, third party defendant, and cross-claim defendant in the Litigation. As used in this Consent Decree, "Allied" includes all of Allied-Signal Inc.'s predecessors, successors, subsidiaries, affiliated companies, and each and all of them including, but not limited to Allied Corporation, a former New York corporation which has also been named as a defendant, third party defendant and cross-claim defendant in the litigation but which was merged into Allied-Signal Inc., in 1987 and which no longer exists as a separate entity.
- B. The "United States" refers to the United States of America, i.e., the plaintiff, counterclaim defendant and cross-claim defendant in the Litigation.
- C. "This action" refers to <u>United States of America v.</u>

 <u>Allied Corporation, et al.</u>, Civil No. C-83-5898 FMS, in the

 United States District Court for the Northern District of

 California.

- D. The "companion action " refers to <u>United States of America v. Chemical and Pigment Company, et al.</u>, Civil No. C-83-5896 FMS, in the United States District Court for the Northern District of California.
- E. The "Litigation" means this action and the companion action.
- F. "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act ("SARA") of 1986, Public Law 99-499.
- G. The "litigation sites" refers to Parcels 571, 572, 573, 574, 575, 576, 579D and 581 at the Naval Weapons Station, Concord, California. The phrase does not include the railroad rights of way adjacent to Parcels 571, 572, 573, 574, 575, 576, 579D, and 581 of the NWS.
- H. Remedial Action Subsites ("RASS's") shall mean those areas of the litigation sites as described in the Final Draft Report of the Feasibility Study of Contamination Remediation at the Naval Weapons Station, Concord, California, dated September 1988 which have been the subject of investigation by the United States Department of the Navy for hazardous substance contamination and are the subject of the Final Remedial Action Plan proposed by the Department of the Navy.
- I. The Final Remedial Action Plan ("FRAP") shall mean that plan selected by the United States Department of the Navy on April 6, 1989, as reflected in the Record of Decision of the

Selection of the FRAP dated April 6, 1989, for the remediation of hazardous substance contamination and the effects thereof on the litigation sites.

- J. "Parties" refers collectively to all parties who are signatories to this Consent Decree.
- K. The "date of entry" or "Effective Date" is the date on which an order approving entry of this Consent Decree is signed by the Court.
 - L. "Days" means calendar days.
- M. Terms not otherwise defined herein shall have their ordinary meaning unless defined in Section 101 of CERCLA, 42
 U.S.C. § 9601, or the National Contingency Plan, 40 C.F.R. Part
 300, (the "NCP") in which case the definition in CERCLA or the
 NCP shall control.

III. Jurisdiction

This Court has subject-matter jurisdiction over this matter and has personal jurisdiction over the parties pursuant to 42 U.S.C. §§ 9604(a) and (b) and 9613(b) and 28 U.S.C. §§ 1345 and 2201. The Third Amended Complaint filed in this action states a claim upon which relief can be granted. Allied waives any objection it may have to the jurisdiction of the Court or to venue for the sole purpose of entry, enforcement, or, pursuant to Section XVI hereof, modification of this Consent Decree.

IV. Public Interest and Good Faith Settlement

The Court finds that entry of this Consent Decree is in the public interest and will expedite response action at the NWS, Concord, consistent with the National Contingency Plan. The Court further finds that the settlement embodied in this Consent Decree was made in good faith.

V. Parties Bound

Subject to Section XVII, upon the signing of this

Consent Decree by a duly authorized representative of Allied, the
provisions of this Consent Decree shall apply to and be binding
upon Allied, its officers, directors, agents, trustees, servants,
employees, successors, assigns, attorneys, and all persons,
firms, and corporations acting under the control or direction of
Allied, and upon the United States. The undersigned
representatives of Allied certify that they are fully authorized
by Allied to enter into the terms and conditions of this Consent
Decree and to legally bind Allied. The United States certifies
that, subject to the provisions of Section XVII of this Consent
Decree, it is fully authorized to enter into this Consent Decree
which will become legally binding upon the United States upon the
signature of the Assistant Attorney General for Environment and
Natural Resources.

VI. Payment

A. Allied shall pay to the Defense Environmental

Restoration Account the sum of \$10,000,000.00 (10 million dollars) as follows:

- 1. Within 30 days of the date of entry of this Consent Decree, Allied shall pay to the Defense Environmental Restoration Account the sum of \$2,500,000.00 (two million five hundred thousands dollars);
- 2. Within seven (7) months after the date of entry of this Consent Decree, Allied shall pay to the Defense Environmental Restoration Account the sum of \$2,500,000.00 (two million five hundred thousand dollars);
- 3. Within thirteen (13) months after the date of entry of this Consent Decree, Allied shall pay to the Defense Environmental Account the sum of \$2,500,000.00 (two million five hundred thousand dollars); and,
- A. Allied shall pay to the Defense Environmental Restoration Account the sum of \$2,500,000.00 (two million five hundred thousand dollars) (the "Final Payment"), (i) within sixteen (16) months after the date of entry of this Consent Decree, should the contractors of the United States have completed all of the active remediation as specified in the FRAP on Remedial Action Subsites ("RASS's") 1, 2 and 4, on the NWS; or (ii) if such contractors have not completed the active remediation activities specified above within 16 months following entry of this Consent Decree, the Final Payment shall be made within thirty (30) days of receipt of notice from the Navy that its contractors have completed all of the active remedial

activities referred to above, provided however, if the remedial activities contemplated above are not completed, within 24 months from the date of entry of this Consent Decree, Allied shall pay the Final Payment within 24 months from the date of entry of this Consent Decree.

- B. The payments described in this Section shall be for the purpose of satisfying Allied's alleged liability to the United States arising out of conditions at the litigation sites, including Allied's alleged liability (1) under Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, and (2) for natural resource damages and shall not be considered to be a penalty, fine, or monetary sanction of any kind.
- C. Each payment shall be by certified check payable to the "Defense Environmental Restoration Account" and shall be sent to:

Deputy Assistant Secretary of Defense (Environmental)
Room 30833
Pentagon
Washington, D.C. 20301-8000

A copy of each check shall be sent to:

Assistant Attorney General for the Environment and Natural Resources Division
United States Department of Justice
P. O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Associate General Counsel (Litigation) Office of the General Counsel Department of the Navy Washington, D.C. 20360

and identified as applicable to the action styled <u>United States</u>

<u>v. Allied Corporation</u>, et al., 90-11-3-26.

D. In the event that Allied should fail to pay any installment due and owing under this Consent Decree on a timely basis, then Allied shall be liable to the United States for (1) interest on the amount of that installment owed until the entire installment plus interest is collected, and (2) for all costs and attorney fees incurred by the United States in collecting any sum owed. The rate of interest shall be the same rate and calculated in the same manner as is set forth in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

VII. Certification of Allied

Allied certifies that to the best of its knowledge and belief it has fully and accurately disclosed to the United States all sampling and testing data and material information currently in its possession regarding the deposition of contaminants on the litigation sites. The United States expressly conditions its consent to this Decree on the accuracy of the foregoing representations.

VIII. Covenant Not To Sue

A. Subject to the reservation of rights under Section IX of this Consent Decree below and the payments specified in Section VI above, the United States covenants not to sue or take any other civil or administrative action against Allied (or any of its officers, directors, agents, employees, shareholders or attorneys) related to, or arising from existing contamination at

the litigation sites. This covenant not to sue includes but is not limited to (1) claims for natural resource damages, (2) claims related to, connected with or arising from response actions pertaining to the presence or alleged presence of contamination and/or hazardous substances at the litigation sites, and (3) the prosecution or defense of this action or the companion action.

- B. The fact that payments by Allied due pursuant to Section VI above are late or unpaid, will not void this Consent Decree unless the United States has attempted to recover, pursuant to this Decree, those overdue payments and has been unsuccessful.
- C. The United States consents, upon Court approval, to the dismissal with prejudice of all claims made by the United States against Allied in this Litigation. Nothing in this Section VIII shall be deemed to limit the United States' rights pursuant to Section IX below.
- D. For purposes of this Consent Decree, the United States covenants and agrees not to sue or take any other civil or administrative action against General Chemical Corporation (or its parent corporation, New Hampshire Oak, Inc.) for alleged contamination on the litigation sites which occurred prior to February 26, 1986; the date General Chemical Corporation acquired the Bay Point Works, Pittsburg, California, from Allied. This agreement shall not be construed to constitute a waiver by the

United States of claims it may have against General Chemical Corporation for any other matter.

E. Allied consents, upon the Court's approval of this Consent Decree, to the dismissal with prejudice of all claims it has made against the United States in this Litigation. Allied further agrees to dismiss with prejudice the action styled Allied-Signal v. Lujan, Civ. No. C-89-2893 FMS (N.D. Cal.).

IX. Reservation of Rights

- A. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States may have, hereafter, against Allied for (1) failure to make the payments required by Section VI of this Consent Decree, or (2) any and all criminal liability.
- B. Except as provided in Section X below, nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a party to this Consent Decree for any liability it may have arising out of or relating to the NWS. Allied and the United States expressly reserve the right to sue any person or entity other than the signatories to this Consent Decree with respect to any matter, including claims relating to the litigation sites.

- C. The covenant not to sue set forth in Section VIII above, shall not extend to any person or legal entity other than Allied, its predecessors, and successors in interest, and its subsidiaries, divisions, parent corporations, affiliates, and all those listed under Section V above, as Parties Bound.
- D. Allied hereby covenants not to sue the United States for any liability for action taken and expenditures made by the United States, its agents and employees prior to the date of entry in responding to the release or threatened release of hazardous substances into the environment from the NWS. Further, Allied agrees not to assert any causes of action, claims, or demands against the United States for reimbursement from the Hazardous Substances Superfund, 26 U.S.C. § 9507, including claims pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. §§ 9611, 9612, or assert any other claims or demands for sums paid in settlement of claims. This paragraph shall not be construed as precluding, in any subsequent action other than enforcement of this Consent Decree, the assertion of (1) any defense available to Allied, or (2) any release or covenant not to sue obtained in this Consent Decree.
- E. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

X. Claims For Contribution

Pursuant to Sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f) and 9622(h)(4), as amended by the Superfund Amendments and Reauthorization Act of 1986, Allied has resolved its liability to the United States as set forth in this Consent Decree, and Allied shall not be liable for claims for contribution regarding the matters addressed in this Consent Decree. This settlement does not discharge the liability of any other potentially responsible party which is not a party to this Consent Decree.

XI. Response Activities by Allied

A. In order to prevent recontamination of the NWS by the release or threat of release of hazardous substances from the Bay Point Works, Pittsburg, California, Allied agrees to undertake appropriate remedial action at the location delineated on Exhibit A hereto, in accordance with paragraph B below. For the purposes of this Consent Decree, "appropriate remedial action" shall be defined as activities conducted in the area delineated on Exhibit A that shall reduce the existing soil metal contamination in the area delineated in Exhibit A to the State of California TTLC/STLC criteria in existence on the date of entry or shall ensure that leaching and soil movement shall not occur such that any portion of the NWS becomes recontaminated at levels greater than TTLC/STLC; the Department of the Navy has determined, pursuant to the National Contingency Plan and in

compliance with Section 121 of CERCLA, that active remediation undertaken on RASS's 1 and 2 which meets or exceeds State of California TTLC/STLC criteria is protective of the human health and the environment; any appropriate remedial action undertaken by Allied within the area delineated on Exhibit A which meets or exceeds State of California TTLC/STLC criteria shall be deemed to be consistent with the National Contingency Plan and in compliance with Section 121 of CERCLA.

- B. Allied agrees to inform the Department of the Navy (Associate General Counsel (Litigation), Office of the General Counsel, Department of the Navy, Washington, D.C. 20360) of Allied's proposed remedial action plan at least 60 days prior to commencement of any such action. Subject to force majeure events and contingent upon timely receipt of concurrence of the appropriate agencies of the United States and or the State of California, Allied shall make a good faith effort to commence its remedial action on or before April 1, 1991, and shall commence its remedial action on or before June 30, 1991, and proceed expeditiously to completion. Allied shall submit all necessary proposals and permit applications for such remedial action to the Department of the Navy and the appropriate federal and/or state agencies by February 1, 1991.
- C. The term "force majeure" is defined as any event arising from causes beyond the control of Allied, or its contractor, subcontractors, agents, or consultants which delays or prevents the performance of any obligation under this Section

notwithstanding Allied's good faith efforts to avoid the delay. The requirement that Allied exercise "good faith efforts to avoid the delay" includes using good faith efforts to anticipate any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. circumstances are occurring or have occurred that delay or may delay the completion of any requirement under this Section XI, whether or not due to a force majeure event, Allied shall notify the Department of the Navy in writing within 10 days after Allied becomes aware of the force majeure event. The notice shall state the anticipated length and cause of the delay, the reasons why the delay is beyond the control of Allied, which of the tasks are directly affected by the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which Allied intends to implement these measures and any aspects of the event which may cause or contribute to an endangerment to public health, welfare or the environment. Economic hardship, normal inclement weather, increased costs of performance and the failure of Allied to make timely application for any reasonably anticipated required permits or approvals or failure to provide all reasonably anticipated information required therefor in a timely manner shall not be considered events beyond the control of Allied, their contractors, subcontractors, agents or consultants and shall not trigger the force majeure provision.

D. The remedial activities set forth in this Section shall be for the purpose of satisfying Allied's alleged liability to the United States at the locations delineated on Exhibit A attached, for Allied's alleged liability in (1) nuisance and in (2) trespass as alleged in the complaints. Upon completion of said remedial action, the United States agrees that all claims for nuisance and trespass alleged in the complaints shall be subject to the covenant not to sue found in Section VIII.

XII. No Admission of Liability

This Consent Decree shall not be considered an admission of liability by Allied or the United States for any purpose other than the enforcement of this Consent Decree. This Consent Decree shall not be admissible in any judicial or administrative proceeding other than an action to secure Court approval of or to enforce this Consent Decree or an action by Allied or its representatives or assignees against any other party alleged to be liable to Allied or its representatives or assigns for contribution, defense costs or indemnification.

XIII. Successors and Assigns

This Consent Decree shall be binding upon and inure to the benefit of Allied, its present, former and future agents, servants, attorneys, representatives, directors, officers, employees, affiliated companies, parent, subsidiaries, shareholders, successors and assigns, and the United States.

XIV. Construction of Consent Decree

Nothing in this Consent Decree shall be construed to constitute (1) any undertaking by Allied to be responsible for the actions of the United States or any other defendant or any of their contractors, subcontractors, agents or employees in the implementation of the selected remedies, whether or not such actions are negligent or (2) except as may be provided for in Section XI hereto, an arrangement by Allied for the disposal or treatment, or for the transportation for the disposal or treatment, of hazardous substances or hazardous wastes.

XV. Fees and Costs

In entering this Consent Decree, Allied has satisfied the government's claims for attorney's fees and costs as set forth in the complaints. Except as set forth above in Section VI D., Each party shall bear its own attorneys' fees and court costs incurred in the Litigation and with respect to the preparation and execution of this Consent Decree.

XVI. Modifications

This Consent Decree constitutes the entire agreement between Allied and the United States regarding the matters set forth herein and supercedes any and all prior understandings, negotiations or agreements between the parties and/or their attorneys. There shall be no modifications of this Consent

Decree except by a writing duly executed by or on behalf of each of the parties and approval of this Court.

XVII. Public Comment

The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The United States will publish the notice promptly upon lodging of this Decree with the Court and will promptly determine whether it gives final approval to the Decree upon close of the public comment period. Having executed this Consent Decree, Allied is bound by this Consent Decree unless and until final approval is denied by the United States or the Court.

XVIII. Continuing Jurisdiction Of The Court

The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XIX. Application to the Court

. Upon execution of this Consent Decree by all parties and completion of the public notice and comment requirements

noted in Section XVII above, Allied and the United States shall jointly move the Court for approval of this Consent Decree provided that comments received during the public comment period do not reveal that entry of this Consent Decree is not within the best interest of public health or the environment. The date on which the Court enters an Order of approval shall be the "Effective Date".

DATE

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the specified public notice requirements.

FOR DEFENDANT ALLIED-SIGNAL INC.

Attornev

Martin B. Helfant

Executive Vice President of Allied-Signal Inc.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Department of Justice

Department of the Navy

RICHARD B. STEWART

Assistant Attorney General

Environment & Natural Resources
Division

U.S. Department of Justice

J. MARTIN ROBERTSON Senior Trial Attorney Office of General

Counsel

Litigation Office

Washington, D.C. 20360-

5110

William W. Westerfull 6, 111

Attorney, Environmental Enforcement Section

TO: 10 (

Attorney, Environmental Enforcement Section

JOSEPH P. RUSSONIELLO United States Attorney Northern District of California

BY:

Assistant United States Attorney

PAUL E. LOCKE

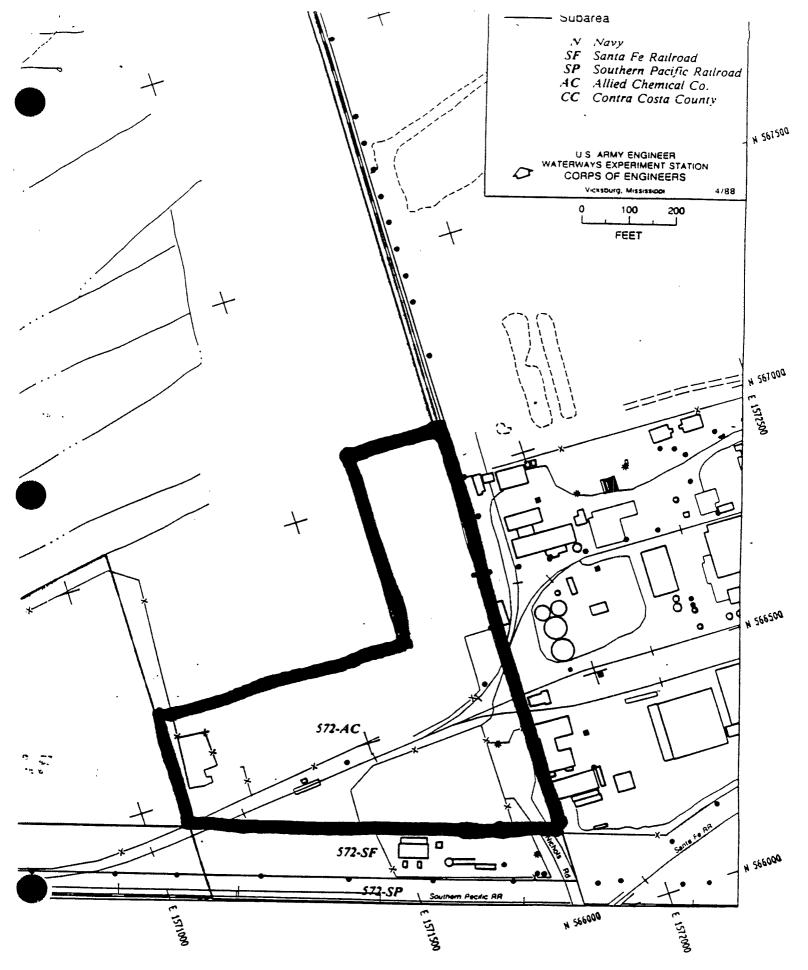


Figure 3. Property Boundaries in RASS 1 and RASS 2

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UNITED STATES DISTRICT COUNT MAINT COUNT FOR NORTHERN DISTRICT OF CAMPAGE COUNTY

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27 28 Plaintiff,)
Civil Action No.

ALLIED CORPORATION, et al.,

UNITED STATES OF AMERICA,

Defendants.
AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS

UNITED STATES OF AMERICA,

Plaintiff,

CHEMICAL & PIGMENT COMPANY, et al.,

Defendants.
AND RELATED CROSS CLAIMS AND
THIRD PARTY CLAIMS

Civil Action No. 83-5898 FMS
Civil Action No. 83-5896 FMS
(CONSOLIDATED CASES)

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Dates to be Ente PLEASE ADVI: DATES TO BE MAE

RICHARD W. WIEKING JE ANY
CLERK, U.S. DISTRICT COURT BY: 1/C
CLERK, U.S. DISTRICT OF CALLOO The altorney, whose is appear below, has revited at the appear below, has revited the appear below, has revited at the applicable or an appear below.

the applicable on interest that applicable on interest the above dates are continued.

Ato:_

The United States and Allied-Signal, Inc., have requested that the Court approve a consent decree entered into between Allied-Signal, Inc., and the United States. The Consent Decree has been lodged with the Court for over thirty days and a notice of such-lodging was published in the Federal Register. The parties represent that no comments have been submitted with respect to this consent decree.

ORDER

The United States and Allied-Signal, Inc., further request that Exhibit A to the proposed Consent Decree be replaced by Exhibit Al attached to their motion to enter the Decree. The parties represent that Exhibit A incorrectly depicts the area to

be remediated by Allied-Signal, Inc., pursuant to the proposed Consent Decree. The parties represent that Exhibit Al correctly depicts the area to be remediated.

The Court having reviewed the Consent Decree and the motion of the United States and Allied-Signal, Inc., and good cause appearing therefore

IT IS ORDERED, ADJUDGED AND DECREED that Exhibit A to the Consent Decree will be replaced by Exhibit A1 and that the Consent Decree between the United States and Allied-Signal, Inc., is hereby approved and entered as a final order of this Court.

Date: Apr. 10 , 1991

JUDGE FERN M. SMITH



ORDER

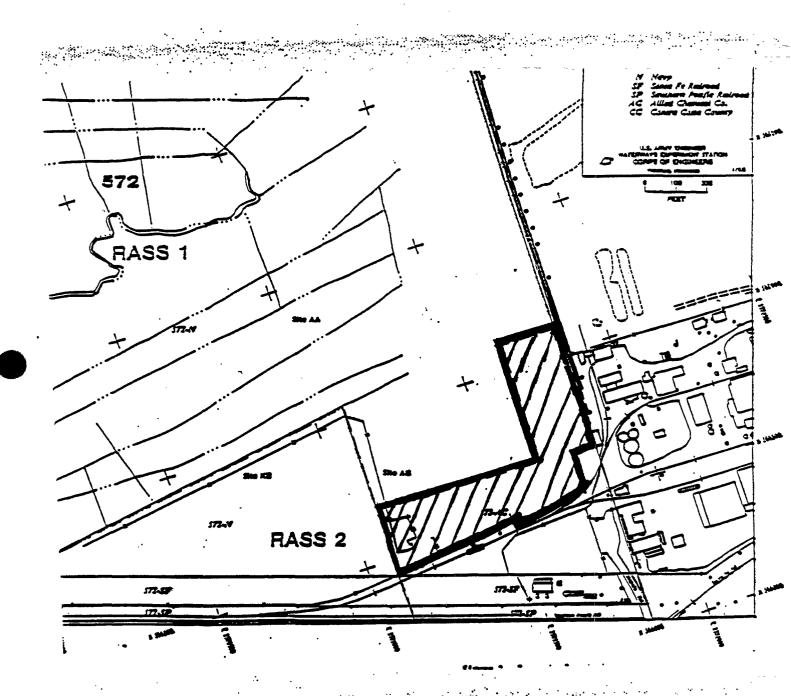


EXHIBIT A1

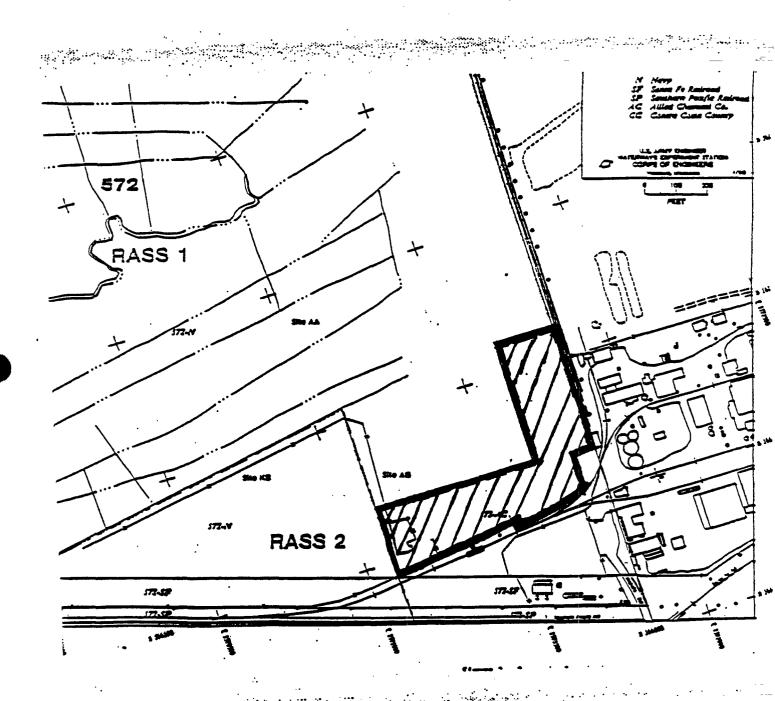


EXHIBIT A1



DEPARTMENT OF THE NAVY OFFICE OF THE GENERAL COUNSEL WASHINGTON, D.C. 20360-5110



11 December 1991

By Federal Express

Jeff Zellickson, Director
Hazardous Waste Management Division
Environmental Protection Agency, Region IX, Code H-I
75 Hawthorne Street
San Francisco, CA 94105

RE: United States v. Allied Corporation, et al., Civil No. C-83-5898 FMS (N.D.

<u>United States v. Chemical & Pigment Co., et al.</u>, Civil No. C-83-5896 FMS (N.D. Calif.)

Dear Mr. Zellickson:

On 13 November 1991, the United States District Court for the Northern District of California entered the seventh and last of the seven consent decrees memorializing settlements between the United States and the fourteen defendants in the above referenced cases.

As you know, the Department of the Navy selected a final remedial action plan for Parcels 572, 573, 574, 575, 576, 579D, and 581 on the Naval Weapons Station, in Concord, California, under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, on 6 April 1989. The Western Division, Naval Facilities Engineering Command, has nearly completed the design of the remedy for these parcels.

Entry of the consent decrees will allow the Navy to carry out the cleanup on these parcels next year. Under the terms of the decrees, the defendants in the litigation must pay the Navy approximately \$11.7 million, which is seventy percent of the estimated cost of carrying out the remedial action on these parcels. In addition, under the terms of the decrees, the five defendants that own contaminated properties adjacent to the contaminated parcels on the station must clean up their properties in coordination with the cleanup on the station. Two of the decrees require Allied-Signal, Inc., and Chemical & Pigment Company to clean up portions of their industrial facilities adjacent to the station. Three other decrees require Sacramento Northern Railroad Company; Atchison, Topeka, and Santa Fe Railway Company; and Southern Pacific Transportation Company to clean up their four rights of way that transect the station.

For your information, I am enclosing a notebook which contains the seven consent

Jeff Zellickson 11 December 1991 Page 2

decrees settling these cases. If you have any questions concerning the decrees, please contact me at the address or telephone listed below.

Sincerely,

J. MARTIN ROBERTSON
Senior Trial Attorney
Department of the Navy
Office of the General Counsel
Litigation Office
c/o: Acumenics Research & Technology
90 New Montgomery, 5th Floor
San Francisco, CA 94105
(415) 777-0283

Enclosure

Copy furnished:

Captain Richard L. Owens, WPNSTA Concord Captain Robert Moeller, WESTDIV

RECEIVED

UNITED STATES DISTRICT COURT()() 1/1/1991
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING CLERK US DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA UNITED STATES OF AMERICA, Plaintiff. Civil Action No. 83-5898 FMS v. ALLIED CORPORATION, et al. Civil Action No. 83-5896 FMS Defendants AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS (CONSOLIDATED CASES) UNITED STATES OF AMERICA, Plaintiff, 6 CHEMICAL & PIGMENT COMPANY, et al., Defendants AND RELATED CROSS CLAIMS AND ORDER THIRD PARTY CLAIMS

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The United States and Chemical & Pigment Company, O. E. Cooper, ESI Chemicals, Inc., and Earth Sciences, Inc., have requested that the Court approve a consent decree entered into between Chemical & Pigment Company, O. E. Cooper, ESI Chemicals, Inc., and Earth Sciences, Inc., and the United States. The Consent Decree has been lodged with the Court for over thirty days and a notice of such lodging was published in the Federal Register. The parties represent that no comments have been submitted with respect to this consent decree.

The Court having reviewed the Consent Decree and the motion of the United States and Chemical & Pigment Company,

O.E. Cooper, ESI Chemicals, Inc., and Earth Sciences, Inc.,

and good cause appearing therefore

IT IS ORDERED, ADJUDGED, AND DECREED that the Consent Decree between the United States and Chemical & Pigment Company, O.E. Cooper, ESI Chemicals, Inc., and Earth Sciences, Inc., is hereby approved and entered as a final order of this Court.

Date: 1991

JUDGE FERN M. SMITH

ORDER

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA 3 UNITED STATES OF AMERICA, 4 Plaintiff. 5 Civil Action No. 83-5898 FMS v. 6 Civil Action No. 83-5896 FMS ALLIED CORPORATION, et al (CONSOLIDATED CASES) 8 Defendants, 9 AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS 10 UNITED STATES OF AMERICA, 11 Plaintiff, 12 v. CONSENT DECREE 13 14 CHEMICAL & PIGMENT COMPANY, et al. 15 Defendants 16 AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIM 17 CONSENT DECREE 18 This Consent Decree is entered into this day of 19 ____, 1991, and is made in light of the following facts: 20 21 Recitals I. 22 Plaintiff, the United States of America (the "United 23 States"), by the authority of the Attorney General of the United 24 States and at the request of the Department of the Navy, filed a 25 complaint and amended complaints against O.E. Cooper, Chemical & 26 Pigment Company, ESI Chemicals, Inc., and Earth Sciences, Inc. (the 27

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"Settling Defendants"), under, inter alia, Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), P.L. No. 99-499, 100 Stat. 1613 (1986), seeking to recover, among other things, costs previously incurred and to be incurred in responding to the alleged release and threatened release of hazardous substances on parcels of property that are now part of the Naval Weapons Station ("NWS") in Concord, California.

- B. The United States also alleged damages to natural resources at the NWS and seeks to obtain compensation for such damages under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).
- In the complaints and amended complaints the United States alleges, among other things, that there were releases of hazardous substances on Parcels 571, 572, 573, 574, 575, 576, 579D, and 581 at the NWS for which the Settling Defendants are allegedly The Settling Defendants contend that the Navy is responsible. or all of those releases responsible for some and have counterclaimed against the United States in connection therewith. In addition, those and similar allegations are the subject of cross-claims, counterclaims, and third party complaints by and among the other parties to this Action and the Companion Action, as defined in Section II.B of this Consent Decree, including claims relating to adjacent property owned by Atchison, Topeka, and Santa Fe Railway Company, Southern Pacific Transportation Company, and

Sacramento Northern Railroad.

D. The United States alleges that the releases to which Section I.C above refers caused and will cause the incurrence of response costs by the United States.

- E. The United States also alleged claims in nuisance and trespass at the NWS and seeks to obtain injunctive relief requiring Chemical & Pigment Company and O.E. Cooper to undertake remediation to prevent the release and threatened release of hazardous substances onto the NWS from adjacent property owned by Chemical & Pigment Company.
- F. The Settling Defendants deny they are liable to the United States for any alleged releases on any parcels of land at the NWS or anywhere else.
- G. The United States has brought suit against others in the Companion Action, as defined in Section II.B, alleging that it has incurred and will incur further response costs as a result of the release of hazardous substances on Parcels 571, 572, and 581 of the NWS. Defendants in the Companion Action have asserted claims against the Settling Defendants and the Settling Defendants have asserted claims against them as well as against the United States.
- H. The United States Department of the Navy-has selected a Final Remedial Action Plan ("FRAP") to address hazardous substance contamination on the Litigation Sites, as defined in Section II.J. The United States represents that it has submitted the FRAP to the appropriate Federal and state agencies for review and comment and that no agency has objected to the FRAP.

- 3 -

I. The United States Department of the Navy agrees that all funds paid to the United States by the Settling Defendants in settlement of their alleged liability will be paid into the Defense Environmental Restoration Account which has been and will be used to design and implement the remedial activities selected and set forth in the FRAP relative to the Litigation Sites, unless ordered to do otherwise by a non-appealable order of a court of appropriate jurisdiction (or a Federal or state agency with appropriate jurisdiction) in which event such funds will be used for any alternate remedial activities that may be required. No provision of this Consent Decree shall be interpreted as a commitment or requirement that the Department of the Navy obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

J. The United States and the Settling Defendants desire to settle all of these matters fully and completely without incurring further legal expenses or the delay and risks that would be involved in trying these matters.

K. This settlement shall not be construed in any way to be an admission of fault or liability by either the United States or the Settling Defendants for any purpose.

L. Pursuant to Section 107(f)(1) of CERCLA; 42 U.S.C. § 9607(f)(1), and Part 300, Subpart G of the National Contingency Plan ("NCP"), 40 C.F.R. § 300.600(b)(3), the Secretary of Defense is the Federal natural resource trustee for the Litigation Sites on the NWS. His authority as trustee for natural resources at the NWS, has been delegated within the Navy to the Assistant Secretary

of the Navy for Installations and Environment.

M. The Settling Defendants and the United States have stipulated and agreed to the making and entry of this Consent Decree.

Therefore, it is hereby agreed by and between the United States and the Settling Defendants and hereby ordered, adjudged, and decreed as follows:

II. <u>Definitions</u>

- A. "Area A," "Area B," and "Area C" refer to those areas where materials were deposited in the South Field on the property at the Nichols Road Facility, which are depicted on Exhibit A to this Consent Decree.
- B. The "Companion Action " refers to <u>United States of America v. Allied Corporation, et al.</u>, Civil No. C-83-5898 FMS, in the United States District Court for the Northern District of California.
- C. "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.

 § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law 99-499.
- D. "Date of Entry" or "Effective Date" is the date on which an order approving entry of this Consent Decree is signed by the Court.
 - E. "Days" means calendar days.
 - F. "Dike" refers to the dike surrounding the surface

impoundment in the northwest portion of the property at the Nichols Road Facility. The "Dike" is depicted on Exhibit A hereto.

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- G. "Final Remedial Action Plan" ("FRAP") shall mean that plan selected by the United States Department of the Navy on April 6, 1989, as reflected in the Record of Decision of the Selection of the FRAP dated April 6, 1989, for the remediation of hazardous substance contamination and the effects thereof on the Litigation Sites.
- "Force Majeure" shall mean any event arising from H. causes beyond the control of Chemical & Pigment Company, or its contractor, subcontractors, agents, or consultants, which delays or prevents the performance of any obligation under Section XI of this Consent Decree notwithstanding Chemical & Pigment Company's good faith efforts to avoid the delay. The requirement that Chemical & Pigment Company exercise "good faith efforts to avoid the delay" includes using good faith efforts to anticipate any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. When circumstances are occurring or have occurred that delay or may delay the completion of any requirement under this Section XI, whether or not due to a force majeure event, Chemical & Pigment Company shall notify the Department of the Navy in writing within 10 days after Chemical & Pigment Company becomes aware of the force majeure event. The notice shall state the anticipated length and cause of the delay, the reasons why the delay is beyond the control of Chemical &

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Pigment Company, which of the tasks are directly affected by the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which Chemical & Pigment Company intends to implement these measures and any aspects of the event which may cause or contribute to an endangerment to public health, welfare, or the environment. Economic hardship, normal inclement weather, or increased costs of performance shall not be considered events beyond the control of Chemical & Pigment Company, its contractors, subcontractors, agents, or consultants, and shall not trigger the force majeure provision.

- I. "Litigation" means this Action and the Companion Action.
- J. "Litigation Sites" refers to Parcels 571, 572, 573, 574, 575, 576, 579D, and 581 at the Naval Weapons Station, Concord, California, as described in the amended complaints in the Litigation. The phrase does not include the railroad rights of way adjacent to Parcels 571, 572, 573, 574, 575, 576, 579D, and 581 of the NWS.
- K. "Nichols Road Facility" refers to the chemical processing facility owned and operated by Chemical & Pigment Company located at 600 Nichols Road, Pittsburg, California.
- L. "Parties" refers collectively to all parties who are signatories to this Consent Decree. "Party" refers individually to each party who is a signatory to this Consent Decree.
- M. "Proposed Closure Plan for Surface Impoundment" refers to the Closure Plan for Surface Impoundment, Chemical &

Pigment Co., Pittsburg, California, which The Mark Group prepared for Chemical & Pigment Company on February 12, 1991. Chemical & Pigment Company submitted the Proposed Closure Plan for Surface Impoundment to the State of California Regional Water Quality Control Board pursuant to Cease and Desist Order No. 90-138, which the Regional Water Quality Control Board adopted on October 17, 1990.

- N. "Revised Closure Plan for South Site" refers to the Revised Closure Plan for South Site, 600 Nichols Road, Chemical & and Pigment Company, Pittsburg, California, which The Mark Group prepared for Chemical & Pigment Company in April 1991, and the Amendments to Revised Closure Plan for South Site, 600 Nichols Road, Chemical and Pigment Company, Pittsburg, California, which The Mark Group prepared for Chemical & Pigment Company on June 13, 1991.
- O. "Settling Defendants" refers to O.E. Cooper, a resident of the State of California; the Chemical and Pigment Company, that corporation organized on or about January 15, 1983, under the laws of California; ESI Chemicals, Inc., that corporation organized under the laws of Colorado; and Earth Sciences, Inc., that corporation organized under the laws of Colorado, which are defendants, third party defendants, and cross-claim defendants in the Litigation. As used in this Consent Decree, "Settling Defendants" includes all of the Settling Defendants' predecessors, successors, subsidiaries, affiliated companies, all other persons and entities described in Section V below, and each and all of

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- "South Field" refers to the property at the Nichols P. Road Facility, bounded on the east by Nichols Road, on the south by Port Chicago Highway, on the west by the NWS, and on the north by the chemical manufacturing buildings and the dike surrounding the surface impoundment. The "South Field" is depicted on Exhibit A hereto.
- "Stockpile Area" refers to the Stockpile Area to be Q. constructed in the South Field as described in the Revised Closure The "Stockpile Area" is depicted on Exhibit A hereto. Plan.
- "Surface Impoundment" refers to the surface R. impoundment on the property at the Nichols Road Facility. The "Surface Impoundment" is depicted on Exhibit A hereto.
- "This Action" refers to United States of America v. s. Chemical and Pigment Company, et al., Civil No. C-83-5896 FMS, in the United States District Court for the Northern District of California.
- "United States" refers to the United States of T. America, i.e., the plaintiff, counterclaim defendant, and crossclaim defendant in the Litigation.
- U. Terms not otherwise defined herein shall have their ordinary meaning unless defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or the National Contingency Plan, 40 C.F.R. Part 300 (the "NCP"), in which case the definition in CERCLA or the NCP shall control.

III. Jurisdiction

This Court has subject-matter jurisdiction over this matter and has personal jurisdiction over the parties pursuant to 42 U.S.C. §§ 9604(a) and (b) and 9613(b) and 28 U.S.C. §§ 1345 and 2201. The Third Amended Complaint filed in this action states claims upon which relief can be granted. The Settling Defendants waive any objection they may have to the jurisdiction of the Court or to venue for the sole purpose of entry, enforcement, or, pursuant to Section XVII hereof, modification of this Consent Decree.

IV. Public Interest and Good Faith Settlement

The Court finds that entry of this Consent Decree is in the public interest and will expedite response action at the NWS, consistent with the National Contingency Plan. The Court further finds that the settlement embodied in this Consent Decree was made in good faith.

V. Parties Bound

Subject to Section XVIII, upon the signing of this Consent Decree by a duly authorized representative of each of the Settling Defendants, the provisions of this Consent Decree shall apply to, be binding upon, and inure to the benefit of each Settling Defendant, as well as their officers, directors, shareholders, agents, trustees, servants, employees, predecessors, successors, assigns, subsidiaries, affiliated companies, attorneys, and all persons, firms, and corporations acting under the control or direction of a Settling Defendant, including but not limited to

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Everett Harris, James Cooper, and Elisabeth Cooper, in both their corporate and personal capacities, and Chemical & Pigment Company, that corporation organized on or about December 20, 1950, as Basic Chemical Company and dissolved on or about December 18, 1979, under the laws of California, and upon the United States. The undersigned representatives of each Settling Defendant certify that they are fully authorized by the Settling Defendant, respectively, to enter into the terms and conditions of this Consent Decree and to legally bind that Settling Defendant. The United States certifies that, subject to the provisions of Section XVIII of this Consent Decree, it is fully authorized to enter into this Consent Decree which will become legally binding upon the United States upon the signature of the Assistant Attorney General Environment and Natural Resources and the approval and entry by the Court.

VI. Payment

A. Within 30 days of the Date of Entry of this Consent Decree, the Settling Defendants shall pay to the Defense Environmental Restoration Account the sum of \$1,350,000.00 (one million three-hundred fifty thousand dollars). The Settling Defendants' shall pay this sum to the United States as follows:

1. Within 30 days of the Date of Entry of this Consent Decree, O.E. Cooper shall pay to the Defense Environmental Restoration Account the sum of \$689,360.00 (six hundred eighty-nine thousand three hundred sixty dollars);

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- 3. Within 30 days of the Date of Entry of this Consent Decree, ESI Chemicals, Inc., and Earth Sciences, Inc., shall pay to the Defense Environmental Restoration Account the sum of \$373,405.00 (three hundred seventy-three thousand four hundred five dollars).
- B. The payments described in this Section VI.A.2 of this Consent Decree shall be for the purpose of satisfying Chemical & Pigment Company's alleged liability to the United States arising out of conditions at the Litigation Sites including Chemical & Pigment Company's alleged liability (1) under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, and (2) for natural resource damages and shall not be considered to be a penalty, fine, or monetary sanction of any kind. The payments described in Section VI.A.1 and 3 of this Consent Decree shall be for the purpose of satisfying O.E. Cooper's, ESI Chemicals', and Earth Sciences' liability to the United States arising out of conditions at the Litigation Sites and the Nichols Road Facility, including O.E. Cooper's, ESI Chemicals', and Earth Sciences' alleged liability (1) under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, (2) for natural resource damages, and (3) for nuisance and trespass as alleged in the complaints and shall not be considered to be a penalty, fine, or

monetary sanction of any kind.

C. The payments required by Section VI.A shall be by draft payable to the "Defense Environmental Restoration Account" and shall be sent to:

Deputy Assistant Secretary of Defense (Environmental)
Room 3D833
Pentagon
Washington, D.C. 20301-8000

A copy of the check shall be sent to:

Assistant Attorney General for the Environment and Natural Resources Division
United States Department of Justice
P. O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Associate General Counsel (Litigation) Office of the General Counsel Department of the Navy Washington, D.C. 20360-5110

and identified as applicable to the action styled <u>United States v.</u>

<u>Chemical and Pigment Corporation, et al.</u>, 90-11-3-26.

- D. Each Settling Defendant is and shall be solely responsible for making the payments of the monies due and owing pursuant to Section VI.A. In no event shall a Settling Defendant be responsible for any payment owed by another of the Settling Defendants.
- E. In the event that any of the Settling Defendants fails to make its payment due and owing under this Consent Decree on a timely basis, then that Settling Defendant shall be liable to the United States for (1) interest on the amount owed by that Defendant until the entire payment installment plus interest is collected, and (2) for all costs and attorney fees incurred by the

 United States in collecting any sum owed by that Settling Defendant. The rate of interest shall be the same rate and calculated in the same manner as is set forth in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

F. With the exception of the response activities to be conducted by Chemical & Pigment Company pursuant to Section XI of this Consent Decree for which Chemical & Pigment Company is responsible, each of the Settling Defendants shall have performed its obligations under this Consent Decree upon the payment of the amounts due and owing under Section VI.A.

VII. Certification of The Settling Defendants

The Settling Defendants certify that to the best of their knowledge and belief they have fully and accurately disclosed to the United States all sampling and testing data and material information currently in their possession regarding the deposition of contaminants on the Litigation Sites. The United States expressly conditions its consent to this Decree on the accuracy of the foregoing representations, provided, however, that the failure of one or more of the Settling Defendants to have disclosed such information shall not affect the validity or enforceability of this Consent Decree with respect to any other Settling Defendant(s). Chemical & Pigment Company certifies that Chemical & Pigment Company has the financial assets to conduct the remedial action on the Nichols Road Facility which Section XI of this Consent Decree requires Chemical & Pigment to undertake, and Chemical & Pigment

commits to conduct the remedial action which Section XI of this Consent Decree requires. The United States expressly conditions its consent to this Consent Decree with Chemical & Pigment Company and O.E. Cooper on the accuracy of the foregoing representations.

VIII. Covenants Not To Sue

A. Subject to the reservation of rights under Section IX of this Consent Decree below and the payments specified in Section VI above, the United States covenants not to sue or take any other civil or administrative action against the Settling Defendants (or any of their officers, directors, agents, employees, shareholders, attorneys, or other persons or entities described in Section V above) related to, or arising from, existing contamination at the Litigation Sites and the Nichols Road Facility. This covenant not to sue includes but is not limited to (1) claims for natural resource damages, (2) claims arising from the removal of hazardous substances from the Litigation Sites in the course of any response action taken pursuant to CERCLA, and (3) claims arising from the Litigation Sites in the course action taken pursuant to CERCLA.

B. Subject to the reservation of rights under Section IX of this Consent Decree below, and the payments specified in Section VI, the United States covenants not to sue or take any other civil or administrative action against O.E. Cooper, ESI Chemicals, Inc., and Earth Sciences, Inc. (or any of their officers, directors, agents, employees, shareholders, attorneys or other persons

entities described in Section V above) related to, or arising from, the migration of existing contamination from the Nichols Road Facility to the Litigation Sites. Subject to the reservation of rights under Section IX of this Consent Decree below, the payments specified in Section VI, and the response activities of Chemical & Pigment Company specified in Section XI, the United States covenants not to sue or take any other civil or administrative action against Chemical & Pigment Company (or any of its officers, 8 directors, agents, employees, shareholders, attorneys, or other persons or entities described in Section V above) related to, or arising from, the migration of existing contamination from the Nichols Road Facility to the Litigation Sites. These covenants not 12 to sue include but are not limited to (1) claims for natural 13 resource damages, and (2) claims arising from the removal of 14 hazardous substances from the Litigation Sites and the Nichols Road 15 Facility in the course of any response action taken pursuant to 16 CERCLA. 17

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- The United States consents, upon the Court's approval of this Consent Decree, to the dismissal with prejudice of all claims made by the United States against the Settling Defendants in this Litigation. Nothing in this Section VIII shall be deemed to limit the United States' rights pursuant to Section IX below.
- D. The Settling Defendants consent, upon the Court's approval of this Consent Decree, to the dismissal with prejudice of all claims they made against the United States in this Litigation.

A. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States may have against Chemical & Pigment Company for failure to comply with Section XI of this Consent Decree, or which the United States may have, hereafter, against the Settling Defendants for (1) failure to make the payments required by Section VI, or (2) any and all criminal liability.

B. Except as provided in Section V above and Section X below, nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity which is not a party bound by this Consent Decree, as described in Section V above, for any liability it may have arising out of or relating to the NWS. The Settling Defendants and the United States expressly reserve the rights to sue any person or entity other than the parties bound by this Consent Decree as described in Section V above, with respect to any matter, including claims relating to the Litigation Sites.

C. The covenant not to sue set forth in Section VIII above shall not extend to any person or legal entity other than the Settling Defendants, their predecessors, and successors in interest, and their subsidiaries, divisions, parent corporations, shareholders, and affiliates, and all those listed under Section V above, as Parties bound by this Consent Decree.

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D. The Settling Defendants hereby covenant not to sue the United States for any liability for action taken and expenditures made by the United States, its agents and employees prior to the Date of Entry in responding to the release or threatened release of hazardous substances into the environment from the NWS. Further, the Settling Defendants agree not to assert any causes of action, claims, or demands against the United States for reimbursement from the Hazardous Substances Superfund, 26 U.S.C. § 9507, including claims pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. §§ 9611, 9612, or assert any other claims or demands for sums paid in settlement of claims. This section shall not be construed as precluding, in any subsequent action other than enforcement of this Consent Decree, the assertion of (1) any defense available to the Settling Defendants, or (2) any release or covenant not to sue obtained in this Consent Decree.

E. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

X. Claims For Contribution

Pursuant to Sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f) and 9622(h)(4), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Settling Defendants have resolved their liability to the United States as set forth in this Consent Decree, and the Settling Defendants shall not be liable for claims for contribution regarding the matters addressed

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in this Consent Decree. This settlement does not discharge the liability of any other potentially responsible party which is not a party bound by this Consent Decree, as described in Section V above.

XI. Response Activities by Chemical & Pigment Company

In order to prevent recontamination of the NWS and the rights-of-way of Sacramento Northern Railroad, Atchison, Topeka, and Santa Fe Railway Company, and Southern Pacific Transportation Company which transect the NWS by the release of hazardous substances from the Nichols Road Facility, Chemical & Pigment Company agrees to undertake appropriate remedial action at the locations delineated as Surface Impoundment, South Field, and Dike on Exhibit A hereto, in accordance with Section XI.C-K below. "Appropriate remedial action" shall be defined as the activities conducted in the areas delineated as Surface Impoundment, South Field, and Dike on Exhibit A to ensure that soil movement shall not occur such that any portion of the NWS becomes re-contaminated at levels greater than California TTLC/STLC criteria after November 15, 1991, and that leaching shall not occur such that any portion of the groundwater on the NWS becomes contaminated at levels greater than applicable Federal and/or state environmental standards, requirements, criteria, or limitations, including but not limited to the Maximum Contaminant Levels established under the Safe Drinking Water Act. Any appropriate remedial action by Chemical & Pigment Company within the areas delineated as Surface

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Impoundment, South Field, and Dike on Exhibit A which meets or exceeds the State of California TTLC/STLC criteria shall be deemed to be consistent with the National Contingency Plan and in compliance with Section 121 of CERCLA.

B. The TTLC/STLC criteria referred to above are:

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STATE OF CALIFORNIA THRESHOLD LIMIT CONCENTRATIONS (WET WEIGHT BASIS)

PARAMETER	TOTAL THRESHOLD LIMIT CONCENTRATION (TTLC) - mg/kg	SOLUBLE THRESHOLD LIMIT CONCENTRATION (STLC) - mg/liter
Cadmium	100	1.0
Copper	2,500	25
Lead	1000	. 5.0
Zinc	5,000	250

C. Chemical & Pigment Company shall complete remedial action in the Surface Impoundment by October 30, 1992, such that the soil on the NWS will not become recontaminated at levels greater than the TTLC/STLC criteria by soil movement and that the groundwater on the NWS will not become contaminated at levels greater than applicable Federal and/or state environmental standards, requirements, criteria, or limitations, including but not limited to the Maximum Contaminant Levels established under the Safe Drinking Water Act. Chemical & Pigment Company agrees that such remedial action shall, at the minimum, provide for the same level of protection to the soil and groundwater on the NWS as that provided by the Proposed Closure Plan for the Surface Impoundment. If Chemical & Pigment cannot finalize its closure plan for the surface impoundment by July 1, 1992, because the State of

California Regional Water Quality Control Board has not approved a proposed closure plan by such date, the date by which Chemical & Pigment Company shall complete the remedial action of the Surface Impoundment specified in Section XI.C of this Consent Decree shall be adjusted to accommodate such a delay, but in no event shall such date be adjusted beyond October 30, 1993.

- D. Chemical & Pigment Company shall complete the characterization of the soil in the South Field, the excavation and stockpiling of contaminated soil in the South Field, the post-excavation grading of soil in the South Field, and the verification of the extent of soil in the South Field, as described in the Revised Closure Plan and specified in Section XI.D.1-6 below, by October 15, 1991. Chemical & Pigment Company shall:
- 1. Characterize the extent of soil below depths of 0-3 inches in Area A, Area B, and Area C in the South Field that contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria before excavating soil from the South Field as required by Section XI.D.2 of this Consent Decree. In particular:
- a. Chemical & Pigment Company shall excavate two trenches, located perpendicular to each other, to a depth of ten (10) feet in Area A; excavate two trenches, located perpendicular to each other, to a depth of five (5) feet in Area B; and excavate two trenches, located perpendicular to each other, to a depth of ten (10) feet in Area C to evaluate the extent of contamination by lead, zinc, cadmium, and/or copper, both laterally and vertically,

in the soil in Area A, Area B, and Area C.

b. Chemical & Pigment Company shall collect soil samples from each trench on twenty (20)-foot centers, at soil intervals of two (2) feet from the bottom of each trench to the surface, and analyze such soil samples, pursuant to procedures specified by State of California regulations, to determine the extent of soil in Area A, Area B, and Area C, both laterally and vertically, that contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria.

- c. Chemical & Pigment Company shall excavate wider and/or deeper trenches, and/or additional trenches, in Area A, Area B, and Area C; collect additional soil samples on twenty (20)-foot centers, at soil intervals of two (2) feet from the bottom of each trench to the surface; and analyze such soil samples, pursuant to procedures specified by State of California regulations, if necessary to determine the extent of soil in Area A, Area B, and Area C, both laterally and vertically, that contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria.
- 2. Excavate all of the soil in the South Field that contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria and place such excavated soil in the Stockpile Area by October 15, 1991. In particular:
- a. Chemical & Pigment Company shall excavate all of the soil in the South Field to a soil depth of three (3) inches and place such excavated soil in the Stockpile Area. Chemical &

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Pigment Company shall excavate the soil in the South Field to a soil depth greater than three (3) inches where the results of analyses of soil samples has shown that the soil contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria. Drawings 3 through 16 in the Revised Closure Plan indicate the soil at greater than three (3) inches depth in the South Field which contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria. Chemical & Pigment shall place this contaminated soil in the Stockpile Area. Chemical & Pigment shall then collect additional soil samples from the South Field and analyze such soil samples, pursuant to procedures specified by State of California regulations, described in the Revised Closure Plan to determine if soil remains in the South Field which contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria. Chemical & Pigment shall excavate any additional soil from the South Field which contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria, which such additional sampling and analyses show is necessary to achieve a closure in which the concentrations of lead, zinc, cadmium, and/or copper in the soil in the South Field do not exceed the TTLC/STLC criteria. Chemical & Pigment shall place this contaminated soil in the Stockpile Area.

b. Chemical & Pigment Company shall excavate all of the soil in Area A, Area B, and Area C in the South Field which the sampling and analyses performed pursuant to Section XI.D.1 of this

Consent Decree indicate contain lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria and place such excavated soil in the Stockpile Area.

- 3. Construct the Stockpile Area, place the contaminated soil excavated from the South Field in the Stockpile Area, cover the contaminated soil placed in the Stockpile Area, and construct a berm around the Stockpile Area by October 15, 1991; and operate and maintain the Stockpile Area in a manner that prevents any migration of contamination from the stockpile area. In particular:
- a. Chemical & Pigment Company shall excavate all of the soil from the Stockpile Area that contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria before covering the soil in the Stockpile Area with a minimum 30-mil polyethylene sheeting.
- b. Chemical & Pigment Company shall cover the soil in the Stockpile Area with a layer of a minimum 30-mil polyethylene sheeting before placing the contaminated soil which is excavated from the South Field in the Stockpile Area.
- c. Chemical & Pigment Company shall place the contaminated soil that is excavated from the South Field pursuant to Section XI.D.2 and 6 of this Consent Decree on the single layer of a minimum 30-mil polyethylene sheeting covering the soil in the Stockpile Area and cover such contaminated soil with another single layer of a minimum 30-mil polyethylene sheeting.
- d. Chemical & Pigment Company shall anchor the polyethylene sheeting that is placed under and over the

contaminated soil in the Stockpile Area with sandbags.

- e. Chemical & Pigment Company shall construct a berm around the Stockpile Area sufficient to prevent lateral migration from the Stockpile Area by October 15, 1991.
- f. Chemical & Pigment shall replace or repair the minimum 30-mil polyethylene sheeting that is placed under and over the contaminated soil in the Stockpile Area if it tears, rips, or deteriorates.
- 4. Grade the South Field after excavation of soil, pursuant to Section XI.D. 2 and 6 of this Consent Decree, to restore the existing drainage patterns in accordance with a pre-excavation survey of the contours of the South Field by October 15, 1991.
- 5. Verify that the soil remaining in the South Field after the contaminated soil is excavated from the South Field and stockpiled does not contain lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria by November 15, 1991. In particular:
- a. Chemical & Pigment Company shall collect soil samples from 25% or thirty-two (32) of the cells identified as Cells 15 through 145 on Exhibit B hereto and analyze such soil samples, pursuant to procedures specified by State of California regulations, to determine if the soil in the South Field contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria. Such analyses shall be conducted by a laboratory certified by the State of California Department of Health Services.

- 25 -

b. Chemical & Pigment Company shall collect soil samples from each cell adjacent to a cell which the analysis performed in Section XI.D.5.a or b of this Consent Decree indicates contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria and analyze such soil samples, pursuant to procedures specified by State of California regulations, to determine if the soil in the cells contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria. Such analyses shall be conducted by a laboratory certified by the State of California Department of Health Services.

c. Chemical & Pigment Company shall collect additional soil samples from each cell which the analysis performed in Section XI.D.5.a or b of this Consent Decree indicates contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria after conducting additional excavation of soil pursuant to Section XI.D.6 of this Consent Decree and analyze such soil samples, pursuant to procedures specified by State of California regulations, to determine if the soil in the cells contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria. Such analyses shall be conducted by a laboratory certified by the State of California Department of Health Services.

6. Excavate all of the soil in each of the cells identified as Cells 15 through 145 on Exhibit B hereto which the verification conducted pursuant to Section XI.D.5 of this Consent Decree indicates contains lead, zinc, cadmium, and/or copper in

concentrations which exceed the TTLC/STLC criteria and place such excavated soil in the Stockpile Area by November 30, 1991. Chemical & Pigment Company shall continue this excavation of soil and the post-excavation sampling and analyses of soil until it verifies that it has excavated all of the soil in the South Field that contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria.

- E. Chemical & Pigment shall complete the capping of the Dike and the areas surrounding the Dike, as described in the Revised Closure Plan and specified in Section XI.E.1-6 below. Chemical & Pigment shall:
- 1. Cap the areas surrounding the northern, western, and southern slopes of the Dike, which are depicted on Exhibit A, with asphalt concrete to a thickness of 1 1/2 inches by October 15, 1991.
- 2. Maintain the asphalt concrete cap on the areas surrounding the northern, western, and southern slopes of the Dike, as described in Section XI.E.1 above, after it is installed so that soil containing lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria is not discharged to the NWS.
- 3. Cover the northern, western, and southern slopes of the Dike with a layer of temporary plastic sheeting, 0.006 to 0.010 inches thick, to prevent displacement of soil on the slopes of the Dike, by October 15, 1991.
 - 4. Maintain the temporary plastic sheeting on the

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6. Maintain the Hypalon liner on the northern, western, and southern slopes of the Dike in place, as described in Section XI.E.5 above, after it is installed so that soil containing lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria is not discharged to the NWS.

northern, western, and southern slopes of the Dike in place, as described in Section XI.E.3 above, after it is installed so that lead, zinc, containing cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria not discharged to the NWS, until Chemical & Pigment covers the northern, western, and southern slopes of the Dike with a permanent Hypalon liner as described in Section XI.E.5 below.

5. Cover the northern, western, and southern slopes of the Dike with a permanent Hypalon liner, if permitted to do so by the California Regional Water Quality Control Board, to prevent displacement of soil on the slopes of the Dike, by October 30, 1992.

F. Chemical & Pigment Company shall provide splits of all verification samples collected pursuant to Section XI.D.5 above and all of the data produced in collection and analysis of samples pursuant to Section XI.D of this Consent Decree to Head, Environmental Restoration Branch, Office of Environmental Management, Code 181, P.O. Box 727, Western Division, Naval Facilities Engineering Command, San Bruno, California 94066, within five (5) working days of the date Chemical & Pigment Company takes such samples or receives such data.

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G. The United States recognizes that if Chemical & Pigment Company encounters volumes of soil which contain lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria (which volumes are greater than anticipated in the Revised Closure Plan) or encounters conditions of force majeure, Chemical & Pigment Company could be delayed in completing the remedial action specified in Section XI.D of this Consent Decree within the If Chemical & Pigment Company dates required by such sections. encounters such conditions or events, the dates prescribed in these sections shall be adjusted to accommodate such conditions or events with the understanding that the Chemical & Pigment Company is committed to complete the remedial action specified in Section XI.D above before the Navy commences the remedial action on Parcels 572, 573, 574, 575, 576, and/or 579D on the NWS called for by its Final Remedial Action Plan in December, 1991. In the event the results of the analyses of soil samples performed pursuant to Section XI.D.5 above indicate that soil in the South Field still contains lead, zinc, copper, or cadmium in concentrations which exceed the TTLC/STLC criteria on November 15, 1991, Chemical & Pigment Company shall isolate such soil and promptly excavate such soil to eliminate the threat that such soils will migrate onto the NWS.

H. Chemical & Pigment Company shall complete the processing of the stockpiled contaminated soil and decontamination of the Stockpile Area, as specified in Section X.H.1-2 below. In particular:

1. Chemical & Pigment Company shall process and remove

all of the soil stockpiled in the Stockpile Area at a rate of 1,000 cubic yards per year.

- 2. After Chemical & Pigment Company has processed and removed all of the soil placed in the Stockpile Area, Chemical & Pigment shall decontaminate the Stockpile Area as specified in Section XI.H.2.a-f below.
- a. Chemical & Pigment Company shall remove and dispose of the liners placed on the Stockpile Area.
- b. Chemical & Pigment Company shall collect soil samples from the Stockpile Area at the four (4) corners of the Stockpile Area and from the surface of the Stockpile Area on fifty(50)-foot centers beginning at the center of the Stockpile Area and progressing outward toward the perimeters of the area. Chemical & Pigment shall analyze such soil samples, pursuant to procedures specified by State of California regulations, to determine the extent of soil in the Stockpile Area, both laterally and vertically, that contains lead, zinc, copper, and/or cadmium in concentrations which exceed the TTLC/STLC criteria.
- c. Chemical & Pigment Company shall excavate all of the soil in the Stockpile Area that contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria, and remove and process all such soil. Chemical & Pigment shall then collect additional soil samples from the Stockpile Area, pursuant to procedures specified by State of California regulations, as described in the Revised Closure Plan to determine if soil remains in the Stockpile Area which contains lead, zinc,

cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria. Chemical & Pigment shall excavate any additional soil from the Stockpile Area which contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria, which additional sampling and analyses show is necessary to achieve a closure of the Stockpile Area in which the concentrations of lead, zinc, cadmium, and/or copper in the soil in the Stockpile Area do not exceed the TTLC/STLC criteria, and remove and process all such soil.

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Chemical & Pigment Company shall verify that the d. soil remaining in the Stockpile Area, after the contaminated soil is excavated from the Stockpile Area and removed and processed pursuant to Section XI.H.2.a-c and f, does not contain lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria by collecting soil samples from the Stockpile Area at each of the four (4) corners of the Stockpile Area and from the surface of the Stockpile Area on fifty(50)-foot centers and analyzing such soil samples, pursuant to procedures specified by State of California regulations, to determine if the soil in the Stockpile Area contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria. Such analyses shall be conducted by a laboratory certified by the State of California Department of Health Services.

e. Chemical & Pigment Company shall excavate all of the soil in the Stockpile Area which the verification conducted pursuant to Section XI.H.2.d of this Consent Decree indicates

contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria and remove and process such soil. Chemical & Pigment shall continue this excavation and removal and processing of soil in the Stockpile Area until it verifies that none of the samples collected from each of the four (4) corners of the Stockpile Area and from each of the surface samples of the Stockpile Area contains lead, zinc, cadmium, and/or copper in concentrations which exceed the TTLC/STLC criteria.

- f. After Chemical & Pigment Company has verified that it has excavated and removed and processed all of the soil in the Stockpile Area that contains lead, zinc, cadmium, and/or zinc in concentrations which exceed the TTLC/STLC criteria, Chemical & Pigment shall grade the Stockpile Area to restore the existing drainage patterns in accordance with a pre-excavation survey of the contours of the South Field.
- I. In the event that Chemical & Pigment Company is prevented from undertaking the remedial action specified in Section XI.A-C above at the Surface Impoundment and/or the remedial action specified in Section XI.A-B, D-E, and G-H above at the South Field or the Dike because it cannot obtain any required permit or other approval from any Federal and/or state agencies, Chemical & Pigment Company shall undertake alternative interim remedial action at the Surface Impoundment, South Field, and/or the Dike sufficient to prevent recontamination of the NWS and the SNRR, ATSF, and SPTC rights-of-way which transect the NWS by the release of hazardous substances from the Chemical & Pigment facility by November 15,

1991, and maintain such interim remedial action until permanent appropriate remedial action can be undertaken.

J. If Chemical & Pigment Company determines to cease operations at the Nichols Road Facility, Chemical & Pigment company shall complete, or before ceasing operations provide for completion of, the remedial action of the South Field and the Dike required by Section XI.A-B, D-E, and G-I of this Consent Decree and complete, or before ceasing operations provide for completion of, the remedial action of the Surface Impoundment required by Section XI.A-C and I of this Consent Decree.

K. The remedial activity set forth in this Section shall be for the purpose of satisfying Chemical & Pigment Company's alleged liability to the United States at the locations delineated as Surface Impoundment, South Field, and Dike on Exhibit A attached, and Chemical & Pigment Company's alleged liability in (1) nuisance and (2) trespass as alleged in the complaints. Upon completion of said remedial action, the United States agrees that all claims for nuisance and trespass alleged in the complaints against Chemical & Pigment Company shall be subject to the covenants not to sue found in Section VIII.

XII. Environmental Compliance

Notwithstanding any other provision in this Consent Decree, in undertaking the remedial action specified in Section XI of this Consent Decree, Chemical & Pigment Company shall comply with any applicable Federal and state environmental laws and regulations.

XIII. No Admission of Liability

This Consent Decree shall not be considered an admission of liability by the Settling Defendants or the United States for any purpose other than the enforcement of this Consent Decree. This Consent Decree shall not be admissible in any judicial or administrative proceeding other than an action to secure Court approval of or to enforce this Consent Decree or an action by the Settling Defendants or their representatives or assignees against any other party alleged to be liable to the Settling Defendants or their representatives or assigns for contribution, defense costs, or indemnification.

XIV. <u>Successors and Assigns</u>

This Consent Decree shall be binding upon and inure to the benefit of the Settling Defendants, their present, former and future agents, servants, attorneys, representatives, directors, officers, employees, affiliated companies, parent corporations, subsidiaries, shareholders, successors and assigns, and other persons and entities described in Section V above, and the United States.

XV. Construction of Consent Decree

Nothing in this Consent Decree shall be construed to constitute (1) any undertaking by any of the Settling Defendants to be responsible for the actions of the United States, or any other defendant or party to the Litigation or any of their contractors,

subcontractors, agents or employees in the implementation of the selected remedies, whether or not such actions are negligent; (2) except as may be provided for in Section XI with respect to the Chemical & Pigment Company hereto, an arrangement by any of the Settling Defendants for the disposal or treatment, or for the transportation for the disposal or treatment, of hazardous substances or hazardous wastes; or (3) any undertaking by ESI Chemicals, Inc., or Earth Sciences, Inc., to be responsible for the actions of Chemical & Pigment Company or any of its contractors, subcontractors, agents, or employees in the implementation of the response activities for the Nichols Road Facility under Section XI, whether or not such actions are negligent.

XVI. Fees and Costs

In entering this Consent Decree, the Settling Defendants have satisfied the United States' claims for attorney's fees and costs as set forth in the complaints. Except as set forth above in Section VI.E, each Party shall bear its own attorneys' fees and court costs incurred in the Litigation and with respect to the preparation and execution of this Consent Decree.

XVII. Modifications

This Consent Decree constitutes the entire agreement between the Settling Defendants and the United States regarding the matters set forth herein and supersedes any and all prior understandings, negotiations, or agreements between the parties

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and/or their attorneys. There shall be no modifications of this Consent Decree except by a writing duly executed by or on behalf of each of the parties and approval of this Court.

XVIII. Public Comment

The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The United States will publish the notice promptly upon lodging of this Decree with the Court and will promptly determine whether it gives final approval to the Decree upon close of the public comment period. Having executed this Consent Decree, the Settling Defendants are bound by this Consent Decree unless and until final approval is denied by the United States or the Court.

XIX. Continuing Jurisdiction Of The Court

The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XX. Application to the Court

Upon execution of this Consent Decree by all Parties and completion of the public notice and comment requirements noted in Section XVIII above, the Settling Defendants and the United States shall jointly move the Court for approval of this Consent Decree provided that comments received during the public comment period do not reveal that entry of this Consent Decree is not within the best interest of public health or the environment. The date on which the Court enters an Order of approval shall be the "Effective Date".

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DATE UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the specified public notice requirements.

FOR DEFENDANT O.E. COOPER

O.E. Cooper

Barry D. Hovis

Adams, Sadler & Hovis

Attorneys for O.E. Cooper

Robert G. Crow

Chemical & Pigment Company

Boornazian, Jensen & Garthe Attorneys for Chemical & Pigment Company

FOR DEFENDANT ESI CHEMICALS INC.

Luane 10 work

ESI Chemicals Inc.

James Peterson

Mahan & Peterson Attorneys for ESI Chemicals, Inc.

Nony A. Aptekan

Patrick Charles Smith

Nancy Aptekar

Meadows, Smith, Lenker, Sterling & Davis Attorneys for ESI Chemicals, Inc.

FOR DEFENDANT EARTH SCIENCES, INC.

Liven Holoom

Earth Sciences, Inc.

Zach C. Miller

Zach C. Miller

Davis, Graham & Stubbs

Attorneys for Earth Sciences, Inc.

1 FOR PLAINTIFF UNITED STATES OF AMERICA: 2 Department of Justice 3 4 RARRY M. HARTMAN 5 6 Division U.S. Department of Justice 7 8 9 10 JON A. MUELLER Attorney, Environmental Enforcement 11 Section 12 WILLIAM T. MCGIVERN United States Attorney 13 Northern District of California 14 15 BY: PAUL E. LOCKE 16 Assistant United States Attorney 17 18 19 20 21 22

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J. MARTIN ROBERTSON Senior Trial Attorney Office of the General Counsel Litigation Office Washington, D.C. 20360-

5110

Department of the Navy

FOR PLAINTIFF UNITED STATES OF AMERICA:

Department of Justice

Department of the Navy

BARRY M. HARTMAN Acting Assistant Attorney General Environment & Natural Resources Division

U.S. Department of Justice

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JON A. MUELLER

Attorney, Environmental Enforcement Section

WILLIAM T. MCGIVERN United States Attorney Northern District of California

BY:

PAUL E. LOCKE

Assistant United States Attorney

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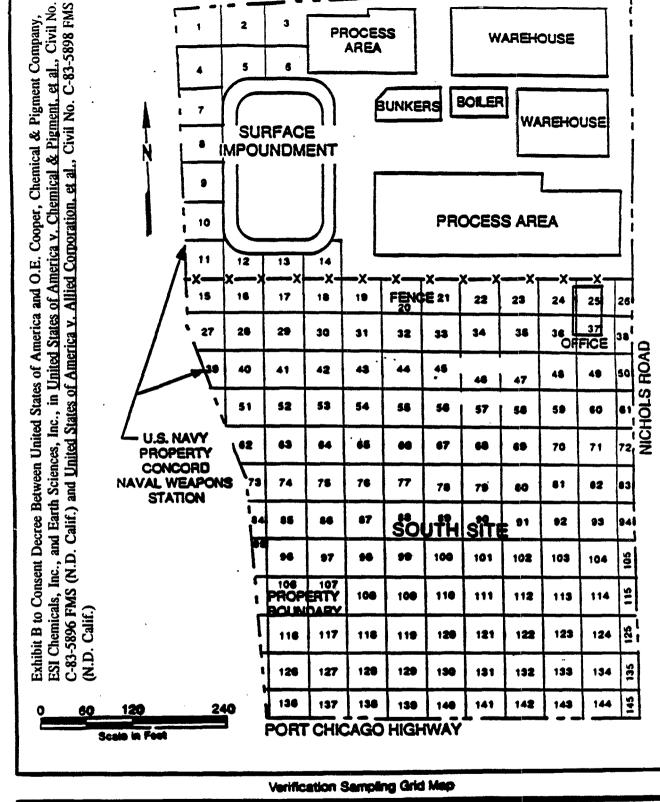
Civil No. C-83-5896 FMS (N.D. Calif.) and United States of America v. Pigment Company, ESI Chemicals, Inc., and Earth Sciences, Inc., in United States of America v. Exhibit A to Consent Decree Between United States of America and O.E. Cooper, Chemical & PROCESS WAREHOUSE AREA Asphalt BOILER BUNKERS Areas WAREHOUSE Surrounding SURFACE the Dike IMPOUNDMENT Civil No. C-83-5898 FMS (N.D. Calif.) Liner 4/5/91 **PROCESS AREA** 3 Stockpile Area OFFICE NICHOLS ROAD & Pigment, et al., 3 Area A Area B U.S. NAVY à PROPERTY CONCORD Approved NAVAL WEAPONS STATION Explanations SOUTH SITE **Waste FIII Location** (SOUTH FIELD) (approximete) PROPERTY Trench BOUNDARY **TDS** 200 FEET à SCALE (APPROXIMATE) PORT CHICAGO HIGHWAY PROJECT NO. South Site Closure Plan 90-1160402.80

INGINEERS & GEOLOGISTS, INC.

Chemical & Pigment Company

Pittsburg, California EXHIBIT A

Sketch 1



PROJECT NO. 90-1160402.80

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4/8/91

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South Site Closure Plan
Chemical & Pigment Company
Pittsburg, California
EXHIBIT 8

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RECEIVED

JAN - 7 1991



WILLIAM W. WESTERFIELD, CHER U.S. District COURT Environmental Enforcement Section Environment and Natural Resources Division P.O. Box 7611 Ben Franklin Station Washington, D.C. 20044 (202) 514-2810

FILED

JAN 8 1991

RICHARD W. WIEKING CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

G. CHRISTIAN ROUX, State Bar No. 102272 PATRICK W. DENNIS, State Bar No. 106796 THOMAS J. P. McHENRY, State Bar No. 133003 MCCLINTOCK, WESTON, BENSHOOF,

ROCHEFORT, RUBALCAVA & MacCUISH 444 South Flower Street, Fifth Floor Los Angeles, California 90071 Telephone: (213) 623-2322

Attorneys for Defendant GETTY OIL COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALLIED CORPORATION, et al.,

Defendants.

AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHEMICAL & PIGMENT COMPANY, et al.,

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Defendants.

AND RELATED CROSS-CLAIMS AND 26

THIRD PARTY CLAIMS

Civil Action No. 83-5898 FMS

Civil Action No. 83-5896 FMS

(Consolidated Cases)

STIPULATION AND ORDER FOR DISMISSAL OF ACTION AS TO GETTY OIL COMPANY

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Pursuant to this Court's entry of the Consent Decree on

IT IS HEREBY STIPULATED by and between plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States, and defendant Getty Oil Company ("Getty"), through its counsel of record herein, that the parties authorize and agree that Getty should be dismissed with prejudice from this action, entitled United States of America v. Allied Corporation, et al., Nos. 83-5898, 83-5896 (consolidated

WILLIAM W. WES	STERFIELD, I	II
UNITED STATES	ATTORNEY	
ENVIRONMENTAL	ENFORCEMENT	SECTION
		1

Attorney for Plaintiff UNITED STATES OF AMERICA

G. CHRISTIAN ROUX PATRICK W. DENNIS THOMAS J. P. MCHENRY

Weston, Benshoof, RUBALCAVA & Maccuish

Christian Roux Attorneys for Defendant GETTY OIL COMPANY

UNITED STATES DISTRICT COURT JUDGE

(PROOF OF SERVICE - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA

iss.

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 444 South Flower Street, Fifth Floor, Los Angeles, California 90071.

On January 4, 1991, I served the foregoing document(s) described as STIPULATION AND ORDER FOR DISMISSAL OF ACTION AS TO GETTY OIL COMPANY on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

(SEE ATTACHED SERVICE LIST)

X I placed such envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California.

X I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in the affidavit.

I delivered such envelope by hand to the offices of the addressees.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Loah Shaw

SERVICE LIST

United States v. Chemical Pigment Co., et al. U.S.D.C. No. C-83-5896 FMS (CW)

United States v. Allied Chemical Corporation, et al. U.S.D.C. No. C-83-5898 FMS (CW)

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Landels, Ripley & Diamond
450 Pacific Avenue
San Francisco, California 94133

Atchison, Topeka & Santa Fe; Santa Fe Industries, Inc.; Santa Fe Land Improvement Co.; and Santa Fe So. Pacific Foundation

WILLIAM W. WESTERFIE Environmental Enforcement rces Division Environment and Natural Reso 2 P.O.Box 7611 1990 Ben Franklin Station 3 FILED Washington, D.C. 20044
(202) 514-2810 RICHARD V. WIEKING
(202) 514-2810 RICHARD V. WIEKING
(CLERK, U.S. ISTRICT COURT
(CLERK, U.S. ISTRICT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA
OF CHRISTIAN ROUX, NORTHERN DISTRICT OF CALIFORNIA
OF CHRISTIAN ROUX, NORTHERN DISTRICT OF CALIFORNIA Washington, D.C. 20044 4 5 PATRICK W. DENNIS, State Bar No. 106796 THOMAS J. P. MCHENRY, State Bar No. 133003 Co. 6 McCLINTOCK, WESTON, BENSHOOF, 、7 ROCHEFORT, RUBALCAVA & MacCUISH 444 South Flower Street, Fifth Floor Los Angeles, California 90071 8 Telephone: (213) 623-2322 9 Attorneys for Defendant GETTY OIL COMPANY 10 11 UNITED STATES DISTRICT COURT 12 NORTHERN DISTRICT OF CALIFORNIA 13 UNITED STATES OF AMERICA, Civil Action No. 83-5898 FMS Plaintiff, 15 Civil Action No. 83-5896 FMS 16 vs. ALLIED CORPORATION, et al., (Consolidated Cases) 17 Defendants. 18 19 AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS 20 UNITED STATES OF AMERICA, Plaintiff, 22 23 vs. CHEMICAL & PIGMENT COMPANY, et 24 al., 25 Defendants. 26 AND RELATED CROSS-CLAIMS AND 27 THIRD PARTY CLAIMS 28 STIPULATION AND ORDER FOR ENTRY OF CONSENT DECREE

> COPIES MAILED TO PARTIES OF RECORD

United States of America ("United States"), by the authority of the Attorney General of the United States, and defendant Getty Oil Company ("Getty"), through its counsel of record herein, that the parties authorize and agree to the entry of the proposed Consent Decree, which was previously lodged with this Court.

This stipulation is entered into by reason of the following:

- 1. The parties have executed and lodged a proposed Consent Decree incorporating the terms of settlement of the above-referenced matter with this Court, pending the period of public comment provided for under 42 U.S.C. § .9622(i) and 28 C.F.R. § 50.7 (true and correct copies of the Consent Decree and Notice of Lodging are attached hereto as Exhibit A).
- 2. The Consent Decree was lodged in the Federal Register, providing the opportunity for public comment on the terms of the Consent Decree, pursuant to 42 U.S.C. § 9622(i), for the 30-day period commencing on July 18, 1990, and ending on August 17, 1990.
- 3. During this 30-day comment period, no written comments, views, or allegations were received relating to the proposed judgment.

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1	4. The Attorne	y General does not withdraw its prior
2	approval of the proposed C	onsent Decree.
3		
4	Dated: September //, 1990	. WILLIAM W. WESTERFIELD, III
5		UNITED STATES ATTORNEY ENVIRONMENTAL ENFORCEMENT SECTION
6		William de de fortilla
7	•	William W. Westerfield, III
8		Attorney for Plaintiff
9	Dated: September 12, 1990	United States of America . G. CHRISTIAN ROUX
10	Daced: September 1., 1990	PATRICK W. DENNIS THOMAS J.P. McHENRY
11		McCLINTOCK, WESTON, BENSHOOF, ROCHEFORT, RUBALCAVA & MacCUISH
12		ROCHEFORT ROBALCAVA & MACCOTSH
13		1) (Mut H
14		G. Christian Roux
15		Attorneys for Defendant GETTY OIL COMPANY
16		
17	IT IS SO ORDERED.	
18	Dated:	
19		
20		F WILLAND
21	ਹ	NITED STATES DISTRICT COURT JUDGE
22		
23		
24		
25		
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27		
28		

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   Assistant Attorney General
   Environment and Natural Resources Division
   WILLIAM W. WESTERFIELD, III
   Environmental Enforcement Section
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   Land and Natural Resources Division
   U.S. Department of Justice
    301 Howard Street, Suite 870
    San Francisco, California 94105
10
   (415) 744-6491
11
   Attorneys for Plaintiff
12
                        IN THE UNITED STATES DISTRICT COURT
                      FOR THE NORTHERN DISTRICT OF CALIFORNIA
13
    UNITED STATES OF AMERICA.
14
                     PLAINTIFF.
15
              v.
                                                  Civil Action No.
16
                                                       83-5898 FMS
    ALLIED CORPORATION,
17
                                                  Civil Action No.
    et al.
                                                       83-5896 FMS
18
                  DEFENDANTS
                                                   (Consolidated Cases)
    AND RELATED CRPOSS CLAIMS AND
19
    THIRD PARTY CLAIMS
20
    UNITED STATES OF AMERICA,
21
                     PLAINTIFF,
22
              v.
    CHEMICAL & PIGMENT COMPANY,
24 et al.
                  DEFENDANTS.
25
    AND RELATED CROSS CLAIMS AND
   THIRD PARTY CLAIMS
26
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NOTICE OF LODGING OF CONSENT DECREE WITH GETTY OIL COMPANY

FORM OBD-183 MAR 83

-2-

FORM OBD-183

1 2 UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF CALIFORNIA 3 4 UNITED STATES OF AMERICA, 5 Plaintiff. 6 Civil Action No. 83-5898 FMS v. Civil Action No. 83-5896 FMS ALLIED CORPORATION. 8 et al (CONSOLIDATED CASES) 9 Defendants. 10 AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS 11 UNITED STATES OF AMERICA. 12 Plaintiff. 13 . CONSENT DECREE 14 v. 15 CHEMICAL & PIGMENT COMPANY. et al. 16 Defendants. 17 AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS 18 19 WHEREAS, plaintiff, the United States of America 20 : (United States), by the authority of the Attorney General of 21 the United States and at the request of the Department of 22 Defense, filed a complaint herein against Getty Oil Company 23 (Getty) under Section 107(a) of the Comprehensive Environmental

Response, Compensation and Liability Act of 1980 ("CERCLA"), 42

U.S.C. § 9601 et seq., as amended by the Superfund Amendments

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25 .

and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613 (1986), seeking to recover costs previously incurred and to be incurred in the future in responding to the alleged release and threatened release of hazardous substances on parcels of property that are now part of the Naval Weapons Station (NWS) in Concord, California;

WHEREAS, the United States has also alleged damages to natural resources at the NWS and seeks to obtain compensation for such damages under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C);

WHEREAS, parcel 575 at the NWS was "owned and operated" by Getty within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), prior to being taken by the United States through condemnation and made a part of the NWS;

WHEREAS, it is alleged in the complaint that there were releases of hazardous substances on parcel 575 during Getty's period of ownership and operation, and that those releases have and will cause the incurrence of response costs by the United States;

WHEREAS, Getty contends that there is no evidence on which liability by it for the contamination allegedly existing at the NWS could be based and that a motion for summary adjudication in favor of Getty based on the absence of such evidence would be successful, but desires to settle this matter without incurring further legal expenses or the delay and risks that would be involved in moving for summary adjudication;

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1	WHEREAS, this settlement shall not be construed in any		
2	way to be an admission of fault or liability by Getty for any		
3	purpose; and		
4	WHEREAS, pursuant to Section 122(g) of CERCLA, 42		
5			
6	U.S.C. § 9622(g), Getty and United States have stipulated and		
7	agreed to the making and entry of this Consent Decree;		
8	1		
9	IT IS THEREFORE AGREED BY AND BETWEEN THE UNITED STATES		
10	AND GETTY, AND HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:		
11	I.		
	<u>DEFINITIONS</u>		
12	The following definitions shall apply to this Consent		
13	Decree:		
14	A. "CERCLA" refers to the Comprehensive Environmental		
15	Response, Compensation, and Liability Act of 1980, 42 U.S.C. §		
16	9601 et seg., as amended by the Superfund Amendments and		
17	Reauthorization Act of 1986, Public Law 99-499.		
18	B. The "affected sites" refers to parcels 571, 572,		
19			
20	573, 574, 575, 576, 579D, and 581 at the Naval Weapons Station,		
21	Concord, California.		
22	C. "Parties" refers collectively to all parties who		
23	are signatories to this consent Decree.		
24	D. The "entry" date shall be the date when this		
25	Consent Decree is signed by the Court.		
26	E. The term "days" shall mean calender days.		

F. Terms not otherwise defined herein shall have their ordinary meaning unless defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or the National Contingency Plan, 40 C.F.R. Part 300, in which case the definition in CERCLA or the NCP shall control.

II.

JURISDICTION

The complaint states a claim upon which relief may be granted. This Court has jurisdiction over the subject matter of this action and over the parties, and venue is properly in this Court pursuant to Section 113(b) and (e) of CERCLA, 42 U.S.C. §9613(b) and (e) and 28 U.S.C. § 1345.

III.

PUBLIC INTEREST

The Court finds that entry of this Consent Decree is in the public interest and will expedite response action consistent with the National Contingency Plan.

IV.

PARTIES BOUND

The provisions of this Consent Decree shall apply to and be binding upon the parties hereto, their respective officers, directors, agents, trustees, servants, employees, successors, assigns, attorneys, and all persons, firms, and corporations acting under the control or direction of the parties. The undersigned representatives of Getty certify that

they are fully authorized by Getty to enter into the terms and conditions of this Consent Decree and to legally bind Getty. The undersigned representatives of the United States certify that they are collectively authorized to enter into this Consent Decree and to legally bind the United States, subject to the provisions of Section XII of this Consent Decree.

v.

PAYMENT

- A. Within 30 days of the entry of this Consent

 Decree, Getty shall pay to the Defense Environmental

 Restoration Fund the sum of \$50,025. This payment shall be for
 the purpose of satisfying Getty's alleged liability under

 Sections 106 and 107 of CERCLA at the affected sites, including
 liability for natural resource damages, and shall not be
 considered to be a penalty, fine or monetary sanction of any
 kind.
- B. The above-referenced payment shall be by certified or cashier's check payable to the Defense Environmental Restoration Fund and shall be sent to: Deputy Assistant Secretary of Defense (Environment), Room 3D833, Pentagon, Washington, D.C. 20301-8000. A copy of the check shall be provided to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044.

due and owing under this Consent Decree, then without further order of the Court this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with Federal Rule of Civil Procedure 69, and other applicable authority. Should Getty fail to pay any amount due and owing under this Consent Decree on a timely basis, Getty shall be liable to the United States for interest on the amount owed until the entire sum is collected and for all costs and attorney fees incurred by the United States in collecting any sum owed. The rate of interest shall be the same rate and calculated in the same manner as is set forth in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

VI.

COVENANT NOT TO SUE

- A. Subject to the reservation of rights under Section VII of this Consent Decree, upon payment by Getty of the amount owed under this Consent Decree, the United States covenants not to sue or take any other civil or administrative action against Getty related to, or arising from, existing contamination at the affected sites. This covenant not to sue includes claims for natural resource damages and claims arising from the removal of hazardous substances from the affected sites in the course of any response action taken pursuant to CERCLA.
- B. In consideration of the foregoing covenant not to sue and the other agreements contained in this Consent Decree,

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Getty covenants not to sue the United States, its employees and contractors for any liability arising out of any activity or expenditure by them in responding to the release or threatened release of hazardous substances at the NWS, including, but not limited to, any claims for contribution or indemnification alleged in Getty's answer and counterclaim in this action.

Upon entry of this Consent Decree, Getty agrees to dismiss its counterclaim against the United States.

VII.

RESERVATION OF RIGHTS

- A. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States may have against Getty for:
- (1) any liability as a result of failure to make the payments required by Section V of this Consent Decree; or (2) any and all criminal liability.
- B. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation, or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the NWS. Getty and United States expressly reserve the right to sue any person or entity other

than the signatories to this Consent Decree with respect to any matter, including claims relating to the affected sites.

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VIII.

CONTRIBUTION PROTECTION

Upon payment of all monies due and owing the United States under this Consent Decree, Getty will have resolved its liability to the United States regarding the matters addressed in this Consent Decree and, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), shall not be liable for any claims for contribution regarding such matters.

IX.

NO ADMISSION OF LIABILITY

This Consent Decree shall not be considered an admission of liability by Getty for any purpose other than the enforcement of this Consent Decree. This Consent Decree shall not be admissible in any judicial or administrative proceeding other than an action to enforce this Consent Decree, or an action by Getty or its representatives or assignees against any other party alleged to be liable to Getty or its representatives or assigneentatives or assigns for contribution, indemnification, or apportionment, or against Getty's insurers, concerning the obligation of the insurers to pay to Getty its defense costs in this litigation and any sums paid by Getty to settle this matter.

CONSTRUCTION OF DECREE

Nothing in this Consent Decree shall be construed to constitute (1) any undertaking by Getty to be responsible for the actions of the United States, any other defendant or any of their contractors or subcontractors in the implementation of the selected remedies, whether or not such actions are negligent, or (2) an arrangement by Getty for the disposal or treatment, or for the transportation for the disposal or treatment, of hazardous substances or hazardous wastes.

XI.

MODIFICATIONS

There shall be no modification of this Consent Decree, including modifications deemed necessary by the United States or the Court as a result of public notice and comment, without written agreement of all parties to the Consent Decree and the Court.

XII.

PUBLIC COMMENT

The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration

denied by the United States or the Court.

XIII.

CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of the Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

of any comments. Having executed this Consent Decree, Getty is

bound by this Consent Decree unless and until final approval is

DATE

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the specified public notice requirements.

FOR DEFENDANT FOUR STAR OIL & GAS COMPANY F/K/A GETTY OIL COMPANY

FIXIA GRITT UIL COMEAN

Frederick L. Moore

Attorney

3 FOR PLAINTIFF UNITED STATES OF AMERICA: 5 Department of Justice Department of the Navy 6 7 8 9 RICHARD B. STEWART ARTIN ROBERTSON Assistant Attorney General Senior Trial Attorney 10 Environment & Natural Resources Office of General Counsel Division Litigation Office 11 U.S. Department of Justice Washington, D.C. 20360-5110 12 13 JOSEPH P. RUSSONIELLO United States Attorney Northern District of California 15 By: 16 Assistant United States Attorney 17 18 WESTERFIELD, III 19 Attorney, Environmental Enforcement Section 20 21 RICHARD L. BEAL 22 Attorney, Environmental Enforcement Section 23 24 25

y

- 11 -

wy Yge Sign

FORM OBD-183 MAR 83

(PROOF OF SERVICE - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA

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jss.

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 444 South Flower Street, Fifth Floor, Los Angeles, California 90071.

On September 28, 1990, I served the foregoing document(s) described as STIPULATION AND ORDER FOR ENTRY OF CONSENT DECREE on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED LIST

X I placed such envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California.

X I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I delivered such envelope by hand to the offices of the addressees.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Peak Shaw

SERVICE LIST

United States v. Chemical Pigment Co., et al. U.S.D.C. No. C-83-5896 FMS (CW)

United States v. Allied Chemical Corporation, et al. U.S.D.C. No. C-83-5898 FMS (CW)

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Norman Laforce, Esq.
Boornazian, Jensen & Garth
A Professional Corporation
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P.O. Box 12925
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CHEMICAL & PIGMENT COMPANY

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EARTH SCIENCES, INC.

Michael L. Whitcomb, Esq. Assistant General Solicitor Union Pacific Railroad Company 5500 Ferguson Drive, Suite J Los Angeles, California 90022

SACRAMENTO NORTHERN RAILROAD

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TRANSPORTATION COMPANY

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SANTA FE LAND IMPROVEMENT, COMPANY, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY and SANTA FE SOUTHERN PACIFIC FOUNDATION

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Land & Natural Resources Division
United States Department of Justice
P.O. Box 7611
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UNITED STATES OF AMERICA

Richard L. Beal, Esq.
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UNITED STATES OF AMERICA

UNITED STATES OF AMERICA

J. Martin Robertson
Department of the Navy
Office of the General Counsel
Litigation Office
524 Golden Gate Avenue, 2nd Floor
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ATSF Railway Company
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5770 South Eastern Avenue
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Frederick Mahan, Esq.
James Peterson, Esq.
Mahan and Peterson
601 California Street
Suite 1500
San Francisco, California 94108

R. Bruce Hoffe, Esq. Watson, Hoffe & Barbieri P.O. Box 5001 Richmond, California 94805-2297 :

RECEIVED

ORDER

UNITED STATES DISTRICT COURT 1117 1 1991 FOR THE NORTHERN DISTRICT OF CALIFORNIA

2 RICHARD W. WIEKING UNITED STATES OF AMERICA, CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFLANIA Plaintiff, Civil Action No. 83-5898 FMS v. ALLIED CORPORATION, et al. Civil Action No. 83-5896 FMS <u>Defendants</u> 7 AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS. (CONSOLIDATED CASES) 8 UNITED STATES OF AMERICA, 9 Plaintiff, 10 v. 11 CHEMICAL & PIGMENT COMPANY, et al., 13 Defendants

AND RELATED CROSS CLAIMS AND

THIRD PARTY CLAIMS

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The United States and Sacramento Northern Railroad Company have requested that the Court approve a consent decree entered into between Sacramento Northern Railroad Company and the United States. The Consent Decree has been lodged with the Court for over thirty days and a notice of such lodging was published in the Federal Register. The parties represent that no comments have been submitted with respect to this consent decree.

The Court having reviewed the Consent Decree and the motion of the United States and Sacramento Northern Railroad Company, and good cause appearing therefore

IT IS ORDERED, ADJUDGED, AND DECREED that the Consent

Decree between the United States and Sacramento Northern
Railroad Company is hereby approved and entered as a final
order of this Court.

Date: 7/0 5/199/ . 1991

JUDGE FERN M. SMITH

ORDER

UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,				
Plaintiff,				
v.	Civil Action No. 83-5898 FMS			
ALLIED CORPORATION,) et al.,	Civil Action No. 83-5896 FMS			
	(CONSOLIDATED CASES)			
Defendants. AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS UNITED STATES OF AMERICA, Plaintiff,	• •			
v.) CONSENT DECREE			
CHEMICAL & PIGMENT COMPANY, et al.,				
Defendants.				
AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS				

WHEREAS, plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and at the request of the Department of the Navy, filed a complaint herein against Sacramento Northern Railroad Company ("SNRR") under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-4997 100 Stat. 1613 (1986),

seeking to recover costs previously incurred and to be incurred in the future in responding to the alleged release and threatened release of hazardous substances on parcels of property that are now part of the Naval Weapons Station ("NWS") in Concord, California;

WHEREAS, the United States also alleged damages to natural resources at the NWS and seeks to obtain compensation for such damages under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C);

WHEREAS, a certain SNRR right-of-way at the NWS was and is "owned and operated" by SNRR within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A);

WHEREAS, the United States also alleged nuisance and trespass at the NWS and seeks to obtain injunctive relief requiring SNRR to undertake remediation to prevent the release and threatened release of hazardous substances onto the NWS from the adjacent SNRR right-of-way.

WHEREAS, it is alleged in the complaint that there were releases of hazardous substances on and from this right-of-way, and that those releases have and will cause the incurrence of response costs by the United States;

WHEREAS, SNRR contends that it is not liable for the contamination allegedly existing at the NWS, but desires to settle this matter without incurring further legal expenses or the delay and risks that would be involved in moving for summary adjudication or going to trial on the merits;

WHEREAS, this settlement shall not be construed in any way to be an admission of fault or liability by SNRR for any purpose; and

WHEREAS, pursuant to Section 122(g) of CERCLA, 42
U.S.C. § 9622(g), SNRR and the United States have stipulated
and agreed to the making and entry of this Consent Decree;

IT IS THEREFORE AGREED BY AND BETWEEN THE UNITED STATES AND SNRR, AND HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I.

DEFINITIONS

The following definitions shall apply to this Consent Decree:

- A. "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.
- B. The "affected sites" refers to Parcels 572, 573, 574, 575, 576, 579D, and 581 at the Naval Weapons Station, Concord, California.
- C. "Parties" refers collectively to all parties who are signatories to this consent Decree.
- D. The "Entry Date" shall be the date when this Consent Decree is signed by the Court.
 - E. The term "days" shall mean calender days.

- F. "Final Remedial Action Plan" means the Plan selected by the United States Department of the Navy on April 6, 1989, for the remediation of hazardous substance contamination and the effects thereof on Parcels 572, 573, 574, 575, 576, 579D, and 581 on the Naval Weapons Station ("NWS"), Concord, California.
- G. "Record of Decision" ("ROD"), means the Record of Decision of the selection of the Final Remedial Action Plan by the United States Department of the Navy on April 6, 1989, pursuant to Sections 104, 120, and 121 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), in response to the release and threatened release of hazardous substances on Parcels 572, 573, 574, 575, 576, 579D, and 581 on the NWS.
- H. "SNRR" shall mean the Sacramento Northern Railroad Company.
- I. Terms not otherwise defined herein shall have their ordinary meaning unless defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or the National Contingency Plan, 40 C.F.R. Part 300, in which case the definition in CERCLA or the NCP shall control.

II.

JURISDICTION

The complaint states a claim upon which relief may be granted. This Court has jurisdiction over the subject matter

of this action and over the parties, and venue is properly in this Court pursuant to Section 113(b) and (e) of CERCLA, 42 U.S.C. § 9613(b) and (e) and 28 U.S.C. § 1345.

III.

PUBLIC INTEREST

The Court finds that entry of this Consent Decree is in the public interest and will expedite response action consistent with the National Contingency Plan.

IV.

PARTIES BOUND

The provisions of this Consent Decree shall apply to and be binding upon the parties hereto, their respective officers, directors, agents, trustees, servants, employees, successors, assigns, attorneys, and all persons, firms, and corporations acting under the control or direction of the parties. The undersigned representatives of SNRR certify that they are fully authorized by SNRR to enter into the terms and conditions of this Consent Decree and to legally bind SNRR. The undersigned representatives of the United States certify that they are collectively authorized to enter into this Consent Decree and to legally bind the United States, subject to the provisions of Section XIII of this Consent Decree.

PAYMENT

- A. Within 30 days of the entry of this Consent Decree, SNRR shall pay to the Defense Environmental Restoration Fund the sum of \$13,360.00 plus \$947.00 = \$14,307.00. This payment shall be for the purpose of satisfying SNRR's alleged liability under Section 107 of CERCLA at the affected sites, including liability for natural resource damages, and shall not be considered to be a penalty, fine or monetary sanction of any kind.
- B. The above-referenced payment shall be by check payable to the Defense Environmental Restoration Fund and shall be sent to: Deputy Assistant Secretary of Defense (Environment), Room 3D833, Pentagon, Washington, D.C. 20301-8000. Copies of the check shall be provided to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and identified as United States v. Allied Corporation, et al 90-11-3-26, and to the Associate General Counsel (Litigation), Office of the General Counsel, Department of the Navy, Washington, D.C. 20360.
- C. In the event that SNRR should fail to pay any sum due and owing under this Consent Decree, then without further order of the Court this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection

in accordance with Federal Rule of Civil Procedure 69, and other applicable authority. Should SNRR fail to pay any amount due and owing under this Consent Decree on a timely basis, SNRR shall be liable to the United States for interest on the amount owed until the entire sum is collected and for all costs and attorney fees incurred by the United States in collecting any sum owed. The rate of interest shall be the same rate and calculated in the same manner as is set forth in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

VI

REMEDIAL RELIEF

A. SNRR shall undertake the remediation which the Navy determined must be undertaken on the SNRR right-of-way adjacent to Parcels 576 and 579D on the NWS in the Final Remedial Action Plan selected by the United States Department of the Navy on April 6, 1989, and the ROD of April 6, 1989. Such remediation shall consist of collection and analysis of samples and excavation, removal, and disposal of soil which exceeds either the TTLC/STLC criteria or the statistically above reference area criteria specified in the Final Remedial Action Plan and as required by Section 02100, Parts 1.4.6., 1.4.7, and 3.3. and Section 02226, Part 3.3 of the 100 Percent Plans and Specifications for the Sacramento Northern Railroad Right-of-Way.

B. The TTLC/STLC criteria referred to above are:

STATE OF CALIFORNIA THRESHOLD LIMIT CONCENTRATIONS (WET WEIGHT BASIS)

PARAMETER	TOTAL THRESHOLD LIMIT CONCEN- TRATION (TTLC)- mg/kg	SOLUBLE THRESHOLD LIMIT CONCEN- TRATION (STLC)- mg/kg
Arsenic	500	5.0
Cadmium	100	1.0
Copper	2500	25
Lead	1000	5.0
Selenium	100	1.0
Zinc	500 0	250

C. The statistically above reference area criteria referred to above are:

STATISTICALLY ABOVE REFERENCE AREA CRITERIA FOR SOIL (DRY WEIGHT BASIS)

PARAMETER	STATISTICALLY ABOVE REFERENCE AREA CONCENTRATION ppm
Arsenic Cadmium Copper Lead	544.2 12.7 344.6
Selenium Zinc	2,511.4

D. SNRR shall undertake the remediation, which is specified in the 100 Percent Plans and Specifications for the Sacramento Northern Railroad Company Right-of-Way within three (3) weeks of the date the Navy completes the excavation and removal of soil from Parcel 579D on the NWS under the initial contract for excavation, removal, and disposal of soil on RASS's 1, 2, and 3 on the NWS and complete remediation, which is specified in these plans and specifications, within 30 days

of the date SNRR begins the remediation, assuming the preconditions set forth in Paragraph VI.F below have been fully met. The Navy shall give SNRR thirty days notice of mobilizing a contractor to undertake the excavation, removal, and disposal of soil on RASS's 1, 2, and 3 on the NWS. SNRR shall coordinate with the Navy to insure that cleanup on its right-of-way is undertaken in a safe, environmentally protective, and cost-effective manner.

- E. The Navy shall undertake monitoring on the SNRR right-of-way adjacent to Parcels 573, 574, 575, 576 and 579D on the NWS for five years. The monitoring shall include the collection of soil samples from the SNRR right-of-way and the analysis of such samples. The Navy shall give SNRR seven (7) days notice of collecting such soil samples on the SNRR right-of-way. SNRR shall grant the Navy the right to enter the SNRR right-of-way to collect such soil samples. SNRR shall not be required to undertake monitoring on the SNRR right-of-way independent of the Navy's monitoring.
- F. SNRR shall not be required to undertake the excavation, removal, and disposal of soil which exceeds either TTLC/STLC criteria or the statistically above reference area criteria specified in the Final Remedial Action Plan until remediation is undertaken on the Chemical & Pigment Company property, located at 600 Nichols Road, Pittsburg, California, sufficient to prevent the release and threatened release of

hazardous substances onto the NWS from the Chemical & Pigment Company facility.

- G. During the five years following completion of the remediation on the SNRR right-of-way, SNRR shall give the Public Works Officer at NWS 30 days notice of mobilizing a contractor to excavate soil, install or, remove culverts, or alter or modify the drainage on its rights-of-way unless such work must be undertaken on an emergency basis. If such work must be undertaken on an emergency basis, SNRR shall give the Public Works Officer at the NWS reasonable notice. Notice of work performed on an emergency basis will be considered reasonable if given within five (5) days after such work has been performed.
- H. The remediation specified herein shall be for the purpose of satisfying SNRR's alleged CERCLA liability to the United States on the SNRR right-of-way, including SNRR's alleged liability in (1) nuisance and in (2) trespass.
- I. Upon providing seven (7) days notice to SNRR, the United States shall have the right to enter and inspect the SNRR right-of-way for purposes of insuring compliance with this Consent Decree.
- J. SNRR shall only be required to comply with the terms of this Section VI if the United States undertakes environmental response activities on the NWS.
- K. The Navy will provide SNRR with the names of the contractors retained to perform remedial activities on the NWS

within a reasonable period after contracts to perform such work for the Navy have been let.

VII.

COVENANT NOT TO SUE

- A. Subject to the reservation of rights under Section VIII of this Consent Decree, upon payment by SNRR of the amount owed under this Consent Decree and completion of remedial action on the SNRR right-of-way by SNRR, the United States covenants not to sue or take any other civil or administrative action against SNRR related to, or arising from, existing contamination at the affected sites. This covenant not to sue includes claims for natural resource damages, claims for government response costs, and claims arising from the investigation removal and remediation of hazardous substances from the affected sites in the course of any response action taken pursuant to CERCIA.
- B. In consideration of the foregoing covenant not to sue and the other agreements contained in this Consent Decree, SNRR covenants not to sue the United States, its officers, employees and contractors for any liability arising out of any activity or expenditure by them in responding to the release or threatened release of hazardous substances at the NWS, including, but not limited to, any claims for contribution or indemnification.

RESERVATION OF RIGHTS

- A. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States may have against SNRR for:
- (1) any liability as a result of failure to make the payments required by Section V of this Consent Decree; or (2) any and all criminal liability.
- B. Nothing in this Consent Decree constitutes a covenant not to sue or otherwise limits the ability of the United States to seek or obtain further relief from SNRR and the covenant not to sue in Section VII above is null and void, if the United States determines, based upon conditions at the affected sites that were previously unknown to the United States, or information received, in whole or part, after the Effective Date, that response actions taken at the Parcels 572, 573, 574, 575, 576, 579D, and 581 on the NWS are not protective of the public health or the environment.
- C. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation, or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the NWS. SNRR and the United

States expressly reserve the right to sue any person or entity other than the signatories to this Consent Decree with respect to any matter, including claims relating to the affected sites.

- D. The covenant not to sue set forth in Section VII above, shall not extend to any person or legal entity other than SNRR, its predecessors, and successors in interest, and its subsidiaries, divisions, parent corporations, and affiliates.
- SNRR hereby remises and covenants not to sue the United States for any liability for action taken and expenditures made by the United States, its agents and employees prior to the Entry Date in responding to the release or threatened release of hazardous substances into the environment from the NWS. Further, SNRR agrees not to assert any causes of action, claims, or demands against the United States for reimbursement from the Hazardous Substances Superfund, 26 U.S.C. § 9507, including claims pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. §§ 9611, 9612, or assert any other claims or demands for sums paid in settlement of claims. This paragraph shall not be construed as precluding, in any subsequent action other than enforcement of this Consent Decree, the assertion of (1) any defense available to SNRR, or (2) any release or covenant not to sue obtained in this paragraph.
 - F. Nothing in this Consent Decree shall be deemed to

constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

IX.

CONTRIBUTION PROTECTION

Upon payment of all monies due and owing the United States under this Consent Decree and performance by SNRR of remedial actions required by the consent decree, SNRR will have resolved its liability to the United States regarding the matters addressed in this Consent Decree and, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), shall not be liable for any claims for contribution regarding such matters.

х.

NO ADMISSION OF LIABILITY

This Consent Decree shall not be considered an admission of liability by SNRR for any purpose other than the enforcement of this Consent Decree. This Consent Decree shall not be admissible in any judicial or administrative proceeding other than an action to enforce this Consent Decree, or an action by SNRR or its representatives or assignees against any other party alleged to be liable to SNRR or its representatives or assigns for contribution, indemnification, or apportionment, or against SNRR's insurers, concerning the obligation of the

insurers to pay to SNRR its defense costs in this litigation and any sums paid by SNRR to settle this matter.

XI.

CONSTRUCTION OF DECREE

Nothing in this Consent Decree shall be construed to constitute (1) any undertaking by SNRR to be responsible for the actions of the United States, any other defendant or any of their contractors or subcontractors in the implementation of the selected remedies, whether or not such actions are negligent, or (2) an arrangement by SNRR for the disposal or treatment, or for the transportation for the disposal or treatment, of hazardous substances or hazardous wastes.

XII.

MODIFICATIONS

There shall be no modification of this Consent Decree, including modifications deemed necessary by the United States or the Court as a result of public notice and comment, without written agreement of all parties to the Consent Decree and the Court.

XIII.

PUBLIC COMMENT

The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is

subject to the requirements of Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. Having executed this Consent Decree, SNRR is bound by this Consent Decree unless and until final approval is denied by the United States or the Court.

XIV.

CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of the Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

DATE	UNITED	STATES	DISTRICT	JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the specified public notice requirements.

FOR DEFENDANT SACRAMENTO NORTHERN RAILROAD COMPANY:

MICMAEL L. WHITCOME General Solicitor

FOR PLAINTIFF UNITED STATES OF AMERICA:

Department of Justice

BARRY M. HARTMAN

Acting Assistant Attorney General Environment & Natural Resources

Division

U.S. Department of Justice

Department of the Navy

J. MARTIN ROBERTSON
Senior Trial Attorney
Office of General Counsel
Litigation Office
Washington, D.C.
20360-5110

JON A. MUELLER

Attorney, Environmental Enforcement Section

JOSEPH P. RUSSONIELLO United States Attorney Northern District of California

By:
Assistant United States Attorney

FOR PLAINTIFF UNITED STATES OF AMERICA:

Department of Justice

Department of the Navy

BARRY M. HARTMAN
Acting Assistant Attorney General
Environment & Natural Resources
Division

U.S. Department of Justice

J. MARTIN ROBERTSON
Senior Trial Attorney
Office of the General
Counsel

Litigation Office Washington, D.C. 20360-

5110

JON A. MUELLER
Attorney, Environmental Enforcement
Section

WILLIAM T. McGIVERN United States Attorney Northern District of California

BY: \ Call

Assistant United States Attorney

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NOV U4 1991

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA NORTHERN DISTRICT OF CALIFORNIA

TES OF AMERICA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLIED CORPORATION, et al.

AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHEMICAL & PIGMENT COMPANY, et al.,

AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS

Civil Action No. 83-5898 FMS

Civil Action No. 83-5896 FMS

(CONSOLIDATED CASES)

FILED

NOV 131991

RICHARD W. WIEKING, CLERK

ORDER

Plaintiff, the United States of America and defendants
Atchison, Topeka, and Santa Fe Railway Company ("ATSF"), Santa
Fe Southern Pacific Foundation, now known as Santa Fe Pacific
Foundation ("Foundation"), Santa Fe Land Improvement Company,
now known as Catellus Development Corporation ("Catellus"),
and Santa Fe Industries, Inc., now known as SFP Properties,
Inc. ("SFPPI") (collectively, "the Santa Fe defendants"), have
requested that the Court approve a consent decree entered into
between the Santa Fe defendants and the United States. The
Consent Decree has been lodged with the Court for over thirty
days and a notice of such lodging was published in the Federal
Register. The parties represent that no comments have been
submitted with respect to this consent decree.

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The Court having reviewed the Consent Decree and the motion of the United States and the Santa Fe defendants, and good cause appearing therefore

IT IS ORDERED, ADJUDGED, AND DECREED that the Consent Decree between the United States and the Santa Fe defendants, is hereby approved and entered as a final order of this Court.

Date: //______, 1991

JUDGE FERN MASMITH

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ORDER

- 2 -

UNITED STATES OF AMERICA,

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(CONSOLIDATED CASES)

v.

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Plaintiff,

ALLIED CORPORATION, et al

Defendants, AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS

UNITED STATES OF AMERICA,

Plaintiff,

CHEMICAL & PIGMENT COMPANY,

et al. Defendants

AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIM

COLERK, H.S. PISTRICT COURT 5898 FMS SAN FRANCISCO Civil Action No. 83-5896 FMS

CONSENT DECREE

WHEREAS, plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and at the request of the Department of the Navy, filed complaints herein against Atchison, Topeka and Santa Fe Railway Company ("ATSF"); Santa Fe Southern Pacific Foundation. Santa Fe Pacific Foundation now known as ("Foundation"); Santa Fe Land Improvement Company, now known as Catellus Development Corporation ("Catellus"); and Santa Fe Industries, Inc., now known as SFP Properties, Inc. ("SFPPI"), under Section 107(a) of the Comprehensive Environmental Response,

1 Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (CERCLA), 4 seeking to recover costs previously incurred and to be incurred 5 in the future in responding to the alleged release and threatened 6 release of hazardous substances on parcels of property which are now part of the Naval Weapons Station, in Concord, California ("NWS") and which were and are "owned and operated" by the United 9| States within the meaning of Section 101(20)(A) of CERCLA, 42 10 U.S.C. § 9601(20)(A). (Hereinafter, ATSF, the Foundation, Catellus, and SFPPI are collectively referred to as "Santa Fe.") 12 The Foundation and Catellus "owned and operated" two of these 13 parcels, Parcels 571 and 573, on the NWS before the United States 14 acquired these parcels.

WHEREAS, the United States alleged damages to natural 16 resources at the NWS and seeks to obtain compensation for such damages under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C);

WHEREAS, the United States also alleged nuisance and trespass at the NWS and seeks to obtain injunctive relief requiring ATSF to undertake remediation on two rights-of-way which transect the NWS and which were and are "owned and operated by ATSF within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), to prevent the release and threatened release of hazardous substances onto the NWS from the

CONSENT DECREE

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adjacent ATSF Rights-of-Way.

WHEREAS, Santa Fe filed counterclaims against the United States and cross-claims against others seeking to recover costs previously incurred and to be incurred in the future in responding to the alleged release and threatened release of hazardous substances on the two ATSF Rights-of-Way which transect the NWS;

WHEREAS, ATSF alleged damages to the two ATSF Rightsof-Way and seeks to obtain compensation from the United States
for such damages under Section 107(a) of CERCLA, 42 U.S.C. §
9607(a);

WHEREAS, ATSF alleged nuisance and trespass on the two ATSF Rights-of-Way and seeks to obtain compensation from the United States for such nuisance and trespass;

WHEREAS, the United States alleged that the NWS has been and continues to be contaminated by the release of hazardous substances on and from the two ATSF Rights-of-Way and that the releases have caused and will cause the United States to incur response costs, and ATSF alleged that its two Rights-of-Way have been and continue to be contaminated by the release of hazardous substances on and from the NWS and that the releases have caused and will cause ATSF to incur response costs;

WHEREAS, ATSF and the United States each contends that it is not liable for the contamination allegedly existing on the other's property.

WHEREAS, the United States Department of the Navy has

CONSENT DECREE

- 3 -

selected a Final Remedial Action Plan (FRAP) to address hazardous substance contamination on Parcels 572, 573, 574, 575, 576, 579D, and 581 on the NWS in compliance with Section 121 of CERCLA. The United States represents that it has submitted the FRAP to the appropriate federal and state agencies for review and comment and that no agency has objected to the FRAP. The Navy plans to design and implement the remedial activities selected and set forth in the FRAP relative to these parcels on the NWS.

WHEREAS, the United States and Santa Fe each desire to settle these matters without incurring further legal expenses or the delay and risks that would be involved in continuing to pursue the litigation;

WHEREAS, this settlement shall not be construed in any way to be an admission of fault or liability by Santa Fe or the United States for any purpose;

WHEREAS, pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), Santa Fe and the United States have stipulated and agreed to the making and entry of this Consent Decree;

IT IS THEREFORE AGREED BY AND BETWEEN THE UNITED STATES AND SANTA FE, AND HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I.

DEFINITIONS

The following definitions shall apply to this Consent Decree:

A. "Affected Sites" refers to Parcels 572, 573, 574, 575, 576, 579D, and 581 at the Naval Weapons Station, Concord,

CONSENT DECREE

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"ATSF Rights-of-Way" refers to the two rights-ofway which transect Parcels 572, 573, 574, 575, 576, and 579D on the NWS and which are owned and operated by ATSF. These rightsof-way are depicted on Exhibits A1 and A2 to this Consent Decree.

- C. "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499.
 - D. "Days" means calendar days.
- "Entry" date shall be the date when this Consent E. Decree is signed by the Court.
- "Final Remedial Action Plan" means the Plan F. selected by the United States Department of the Navy on April 6, 1989, for the remediation of hazardous substance contamination and the effects thereof on Parcels 572, 573, 574, 575, 576, 579D, and 581 on the Naval Weapons Station, Concord, California.
- "Force majeure" is defined as any event arising G. from causes beyond the control of ATSF, or its contractor, subcontractors, agents, or consultants which delays or prevents the performance of any obligation under Section VI of this Consent Decree notwithstanding ATSF's good faith efforts to avoid The requirement that ATSF exercise "good faith efforts to avoid the delay" includes using good faith efforts to anticipate any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event,

CONSENT DECREE

such that the delay is minimized to the greatest extent practicable. When circumstances are occurring or have occurred that delay or may delay the completion of any requirement under Section VI of this Consent Decree, whether or not due to a force majeure event, ATSF shall notify the Head, Environmental Restoration Branch, Office of Environmental Management, Code 181, Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94066, and Associate General Counsel (Litigation), Office of the General Counsel, Department of the Navy , Washington, D.C. 20360-5110, in writing within 10 days after ATSF becomes aware of the force majeure event. shall state the anticipated length and cause of the delay, the reasons why the delay is beyond the control of ATSF, which of the tasks are directly affected by the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which ATSF intends to implement these measures and any aspects of the event which may cause or contribute to an endangerment to public health, welfare or the environment. Economic hardship, normal inclement weather, increased costs of performance, and the failure of ATSF to make timely application for any reasonably anticipated required permits or approvals or failure to provide all reasonably anticipated information required therefor in a timely manner shall not be considered control ATSF, its contractors, events beyond the of subcontractors, agents, or consultants and shall not trigger the force majeure provision.

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CONSENT DECREE

H. "Litigation" refers to <u>United States v. Allied</u>

<u>Corporation. et al.</u>, Civil No. C-83-5898 FMS, and <u>United States</u>

<u>v. Chemical & Pigment Co., et al.</u>, Civil No. C-83-5896 FMS, in the United States District Court for the Northern District of California.

- I. "NCP" refers to the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300.
- J. "Parties" refers collectively to all parties who are signatories to this Consent Decree.
- K. "RASS 2" refers to Remedial Action Subsite 2 as defined in the Final Remedial Action Plan.
- L. "RASS 3" refers to Remedial Action Subsite 3 as defined in the Final Remedial Action Plan.
- M. "Record of Decision" ("ROD") means the Record of Decision of the selection of the Final Remedial Action Plan by the United States Department of the Navy on April 6, 1989, pursuant to Sections 104, 120, and 121 of CERCLA in response to the release and threatened release of hazardous substances on Parcels 572, 573, 574, 575, 576, 579D, and 581 on the NWS.
- N. "Santa Fe" refers collectively to the Atchison,
 Topeka and Santa Fe Railway Company ("ATSF"); Santa Fe Southern
 Pacific Foundation, now known as Santa Fe Pacific Foundation
 ("Foundation"); Santa Fe Land Improvement Company, now known as
 Catellus Development Corporation ("Catellus"); and Santa Fe
 Industries, Inc., now known as SFP Properties, Inc. ("SFPPI").
 - O. "STLC" means the "Soluble Threshold Limit

Concentration."

P. "TTLC" means the "Total Threshold Limit Concentration."

Q. Terms not otherwise defined herein shall have their ordinary meaning unless defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or the NCP, 40 C.F.R. Part 300, in which case the definition in CERCLA or the NCP shall control.

II.

JURISDICTION

The complaints and amendments thereto, and Santa Fe's counterclaims and amendments thereto, state claims upon which relief may be granted. This Court has jurisdiction over the subject matter of this action and over the parties, and venue is proper in this Court pursuant to Section 113(b) and (e) of CERCLA, 42 U.S.C. § 9613(b) and (e) and 28 U.S.C. § 1345.

III.

PUBLIC INTEREST

The Court finds that entry of this Consent Decree is in the public interest and will expedite response action consistent with the NCP.

IV.

PARTIES BOUND

The provisions of this Consent Decree shall apply to and be binding upon the parties hereto, their respective officers, directors, agents, partners, parent and subsidiary corporations, shareholders, affiliates, representatives,

CONSENT DECREE

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insurers, trustees, servants, employees, successors, assigns, attorneys, and all persons, firms, and corporations acting under the control or direction of the parties. The undersigned representatives of Santa Fe certify that they are fully authorized by Santa Fe to enter into the terms and conditions of this Consent Decree and to legally bind Santa Fe. The undersigned representatives of the United States certify that they are collectively authorized to enter into this Consent Decree and to legally bind the United States, subject to the provisions of Section XIII of this Consent Decree.

v.

PAYMENT

A. Within ninety (90) days of the entry of this Consent Decree, the United States shall pay to ATSF the sum of Five Hundred Thousand Dollars (\$500,000). This payment shall be for the purpose of satisfying the United States' alleged liability under Section 107 of CERCLA for response costs and damages incurred and to be incurred by ATSF with respect to hazardous substances on the NWS and the ATSF Rights-of-Way and for nuisance and trespass on the two ATSF Rights-of-Way, and shall not be considered to be a penalty, fine, or monetary sanction of any kind.

B. The above-referenced payment shall be by check payable to ATSF delivered to ATSF's counsel, John F. Barg, Landels, Ripley & Diamond, Hills Plaza, 350 Steuart Street, San Francisco, California 94105-1250.

CONSENT DECREE

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REMEDIAL RELIEF

- A. ATSF shall undertake appropriate remedial action on the ATSF Rights-of-Way as specified in Section VI.A.1-6 below.
- 1. ATSF shall conduct the following pre-excavation sampling and analysis of soils on the ATSF Rights-of-Way.

a. Sampling Locations:

Create a grid system of cells approximately 20 feet by 20 feet in dimension. Locate one sample point in the center of each cell in the grid. Sample all points in 6-inch horizons from the surface. The deepest horizons to be sampled are as follows:

RASS 2: 36-42 inches (7 total horizons sampled)
RASS 3: 6-12 inches (2 total horizons sampled)

"Surface" means the surface of the soil; therefore, where kiln rubble or kiln debris is located atop the surface of the soil, sampling shall not begin until the kiln rubble and kiln debris has been excavated and removed.

b. <u>Sample Collection:</u>

Collect one sample at each point and horizon for laboratory analysis. Provide splits of all samples to the Navy.

c. <u>Sample Analysis:</u>

Analyze all samples in accordance with the following criteria:

Analyze each sample for TTLCs for arsenic, cadmium, copper, lead, selenium, and zinc and, as appropriate, for STLCs for arsenic, cadmium, copper, lead, selenium, and zinc. Analyze for STLCs only if the TTLC analysis yields a concentration between the TTLC value and 10 times the STLC value. That is, if the sample either exceeds any TTLC or is lower than 10 times any STLC, do not analyze for STLCs. However, if the sample does not exceed any TTLC, but falls between the TTLC value and 10 times the STLC value, perform a waste extraction test and analyze the STLCs.

Analyze 10 percent of these samples, selected at random, as split samples for quality assurance/ quality control.

Each location/horizon that exceeds any TTLC or STLC shall be designated "contaminated." Each location/horizon that does not exceed any TTLC or STLC shall be designated uncontaminated.

Perform TTLC and STLC analyses in accordance with C.C.R., Title 22, Article 11.

Provide copies of results of analyses of these samples to the Navy within five (5) working days of the date ATSF receives such results.

- 2. ATSF shall excavate, remove, and dispose of any kiln rubble and kiln debris and any contaminated soils from the ATSF Rights-of-Way.
- 3. ATSF shall perform post-excavation sampling and analysis of soils on the ATSF Rights-of-Way in accordance with C.C.R., Title 22, Article 11, as reasonably necessary to confirm that any contaminated soils have been removed. ATSF shall provide splits of all samples to the Navy. ATSF shall provide copies of the results of the analyses of these samples to the Navy within five (5) working days of the date ATSF receives such results.
- 4. After excavating, removing, and disposing of any contaminated soils from the southernmost of the ATSF Rights-of-Way, ATSF shall backfill, grade, and revegetate the southernmost of the ATSF Rights-of-Way as necessary to prevent erosion of the ATSF Rights-of-Way and prevent migration of any contaminated soils from horizons more than 12 inches below the current surface of the southernmost of the ATSF Rights-of-Way to the NWS (unless

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precluded by law), and as required by any applicable provisions of the Endangered Species Act, the Clean Water Act, the Rivers and Harbors Act of 1899, and other applicable law.

- After excavating, removing, and disposing of any contaminated soils from the northernmost of the ATSF Rights-ofshall backfill, ATSF Way, grade, and revegetate northernmost of the ATSF Rights-of-Way as necessary to prevent erosion of the ATSF Rights-of-Way and the NWS and to prevent the migration of any contaminated soils from horizons more than 42 inches below the current surface of the northernmost of the ATSF Rights-of-Way to the NWS (unless precluded by law), and as required by any applicable provisions of the Endangered Species Act, the Clean Water Act, the Rivers and Harbors Act of 1899, and other applicable law.
- comply with any applicable Federal and state environmental laws and regulations, including but not limited to any applicable provisions of the Endangered Species Act, the Clean Water Act, and the Rivers and Harbors Act of 1899. Any appropriate remedial action by ATSF on the ATSF Rights-of-Way which meets or exceeds the State of California TTLC/STLC criteria shall be deemed to be consistent with the National Contingency Plan and in compliance with Section 121 of CERCLA. ATSF shall submit all necessary proposals and permit applications to excavate and remove contaminated soil from the ATSF Rights-of-Way and backfill, grade, and revegetate the ATSF Rights-of-Way in

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compliance with the Endangered Species Act, the Clean Water Act, the Rivers and Harbors Act of 1899, CERCLA, California Fish & Game Code, the California Water Code, and the California Health & Safety Code to appropriate federal and/or state agencies and the Department of the Navy by September 10, 1991. ATSF shall send copies of such proposals and applications to the Head, Environmental Restoration Branch, Office of Environmental Management, Code 181, Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94066, and Associate General Counsel (Litigation), Office of the General Counsel, Department of the Navy, Washington, D.C. 20360-5110.

B. The TTLC/STLC criteria referred to above are:

STATE OF CALIFORNIA THRESHOLD LIMIT CONCENTRATIONS

SUBSTANCE	TTLC mg/kg	STLC mg/ liter
Arsenic	500	5.0
Cadmium	100	1.0
Copper	2500	25
Lead	1000	5.0
Selenium	100	1.0
Zinc	5000	250

C. ATSF shall undertake the remediation on the southernmost of the ATSF Rights-of-Way which is specified in Section VI.A of this Consent Decree within three (3) weeks after the date the Navy completes the excavation and removal of soil from Parcel 579D on the NWS and complete remediation on the southernmost of the ATSF Rights-of-Way which is specified in Section VI.A of this Consent Decree within thirty (30) days of

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the date ATSF begins such remediation, assuming the preconditions set forth in Section VI.E below have been fully met and subject to force majeure events and contingent upon timely receipt of permits or concurrence of the appropriate agencies of the United States and/or the State of California. ATSF shall complete the remediation on the northernmost of the ATSF Rightsof-Way which is specified in Section VI.A of this Consent Decree within thirty (30) days after the date the Navy completes the excavation and removal of soil from RASS 3 on the NWS, assuming the pre-conditions set forth in Section VI.E below have been fully met and subject to force majeure events and contingent upon timely receipt of permits or concurrence of the appropriate agencies of the United States and/or the State of California. The Navy shall give ATSF thirty (30) days notice of mobilizing a contractor to undertake the excavation, removal, and disposal of soil on RASS 3 on the NWS, and the Navy shall give ATSF twenty (20) days notice of its expected completion of the excavation and removal of soil from RASS 3 on the NWS.

ATSF shall undertake monitoring of any soil on the ATSF Rights-of-Way which exceeds the TTLC/STLC criteria after ATSF completes the remediation required by Section VI.A of this Consent Decree for five (5) years. The Navy may undertake monitoring on the ATSF Rights-of-Way for five years. The monitoring may include the collection of soil, plant, and animal samples from the ATSF Rights-of-Way and the analysis of such samples.

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E. Notwithstanding the provisions of Section VI.A, C, and D, ATSF shall not be required to undertake the excavation, removal, and disposal of soil which exceeds the TTLC/STLC criteria specified in Section VI.A above until remediation is undertaken on the Chemical & Pigment Company property, located at 600 Nichols Road, Pittsburg, California, sufficient to prevent the release and threatened release of hazardous substances onto the NWS and onto the ATSF Rights-of-Way from the Chemical & Pigment Company facility.

ATSF shall give the Public Works Officer at NWS F. (Naval Weapons Station, Concord, Public Works Officer, Code 09, Concord, California 94520) thirty (30) days notice of mobilizing a contractor to excavate soil, install or remove culverts, or alter or modify the drainage on the ATSF Rights-of-Way, unless such work must be undertaken on an emergency basis, during the five (5) years which follow the completion of the remediation on the ATSF Rights-of-Way. If such work must be undertaken on an emergency basis, ATSF shall give the Public Works Officer at the NWS reasonable notice. The Navy shall give the Environmental & Hazardous Materials Control at ATSF (The Atchison, Topeka and Santa Fe Railway Company, 5770 South Eastern Avenue, Los Angeles, California 90040) thirty (30) days notice of mobilizing a contractor to excavate soil, install or remove culverts, or alter or modify the drainage on the Affected Sites, unless such work must be undertaken on an emergency basis, during the five (5) years which follow the completion of the remediation

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on the Affected Sites. If such work must be undertaken on an emergency basis, the Navy shall give the Manager of Environmental & Hazardous Materials Control at ATSF reasonable notice.

- G. The remediation specified herein shall be for the purpose of satisfying the parties' alleged liability to each other, including the parties' alleged liability for (1) nuisance, (2) trespass, and (3) response costs and natural resource damages under CERCLA.
- н. ATSF and the Navy shall coordinate and cooperate with each other to insure that cleanup on the ATSF Rights-of-Way and the NWS is undertaken in a safe and environmentally protective manner. Specifically, and without limitation of the foregoing, ATSF shall grant the Navy the right to enter the ATSF Rights-of-Way to conduct the remediation on the NWS upon reasonable notice to ATSF and upon the execution of releases and waivers of liability substantially in the form attached hereto as Exhibit B by each of the persons entering the ATSF Rights-of-Way on behalf of the Navy. The Navy shall grant ATSF the right to enter the NWS to conduct the remediation on the ATSF Rights-Of-Way upon reasonable notice to the Navy and subsequent approval by the Security Office at the NWS, and upon the execution of releases and waivers of liability substantially in the form attached hereto as Exhibit C by ATSF and each of the persons entering the NWS on behalf of ATSF.

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COVENANTS NOT TO SUE

Subject to the reservation of rights under Section A. VIII of this Consent Decree, upon ATSF's completion of of the ATSF Rights-of-Way, the United States remediation covenants not to sue or take any other civil or administrative action against Santa Fe, its officers, employees, or contractors for any claims related to, or arising from, existing contamination at the Affected Sites or the ATSF Rights-of-Way. This covenant not to sue includes claims for natural resource damages and claims arising from the removal of hazardous substances from the Affected Sites and the ATSF Rights-of-Way in the course of any response action undertaken pursuant to CERCLA, including, but not limited to, claims for contribution or indemnification.

В. Subject to the reservation of rights in Section VIII of this Consent Decree, upon the United States' completion of remediation of its Affected Sites and payment of the amount owed ATSF under Section V of this Consent Decree. Santa Fe covenants not to sue or take any other civil or administrative action against the United States, its officers, employees, or contractors for any claims related to, or arising from, existing contamination at the Affected Sites or the ATSF Rights-of-Way. This covenant not to sue includes claims for damages and claims arising from the removal of hazardous substances from the Affected Sites and the ATSF Rights-of-Way in

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the course of any response action undertaken pursuant to CERCLA, including, but not limited to, any claims for contribution or indemnification.

- C. The United States consents, upon the Court's approval of this Consent Decree, to the dismissal with prejudice of all claims made by the United States against Santa Fe in this Litigation. Nothing in this Section VII shall be deemed to limit the United States' rights pursuant to Section VIII below.
- D. Santa Fe consents, upon the Court's approval of this Consent Decree, to the dismissal with prejudice of all claims they made against the United States in this Litigation. Nothing in this Section VII shall be deemed to limit Santa Fe's rights pursuant to Section VIII below.

VIII.

RESERVATIONS OF RIGHTS

- A. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which ATSF may have against the United States for failure to make the payments required in Section V of this Consent Decree.
- B. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States may have against ATSF for any and all criminal liability.

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C. Nothing in this Consent Decree shall constitute a covenant not to sue or otherwise limit the ability of the United States to seek or obtain further relief from ATSF and the covenant not to sue in Section VII above is null and void, if the United States determines, based upon conditions at the Affected Sites or the ATSF Rights-of-Way that were previously unknown to the United States, or information received, in whole or part, after the Entry Date, that response actions taken on the ATSF Rights-of-Way are not protective of the public health or the environment.

D. Nothing in this Consent Decree shall constitute a covenant not to sue or otherwise limit the ability of ATSF to seek or obtain further relief from the United States and the covenant not to sue in Section VII above is null and void, if ATSF determines, based upon conditions at the Affected Sites or the ATSF Rights-of-Way that were previously unknown to the ATSF, or information received, in whole or in part, after the Entry Date, that response actions taken on Parcels 572, 573, 574, 575, 576, or 579D on the NWS are not protective of the public health or the environment on the ATSF Rights-of-Way.

E. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation, or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the NWS. Santa Fe and the United

CONSENT DECREE

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States expressly reserve the right to sue any person or entity other than the signatories to this Consent Decree with respect to any matter, including claims relating to the Affected Sites and the ATSF Rights-of-Way.

United States for any liability for action taken and expenditures made by the United states or its agents and employees prior to the Entry Date in responding to the release or threatened release of hazardous substances into the environment from Parcels 571, 572, 573, 574, 575, 576, or 579D on the NWS. Further, ATSF agrees not to assert any causes of action, claims, or demands against the United States for reimbursement from the Hazardous Substances Superfund, 26 U.S.C. § 9507, including claims pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. §§ 9611 and 9612, or assert any other claims or demands for costs incurred in satisfying its remedial obligations under Section VI of this Consent Decree.

- G. Except as provided in Section VIII.B above, the United States hereby remises and covenants not to sue ATSF for any liability for action taken and expenditures made by Santa Fe or its agents and employees prior to the Entry Date in responding to the release or threatened release of hazardous substances into the environment from the ATSF Right-of-Way.
- H. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

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CONTRIBUTION PROTECTION

A. Upon performance by ATSF of remedial actions required by this Consent Decree, ATSF will have resolved its liability to the United States regarding the matters addressed in this Consent Decree and, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), shall not be liable for any claims for contribution regarding such matters.

B. Upon performance by the United States of remedial action required by this Consent Decree and payment of the amount owed ATSF under Section V of this Consent Decree, the United States will have resolved its liability to ATSF regarding the matters addressed in this Consent Decree and, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), shall not be liable for any claims for contribution regarding such matters.

X.

NO ADMISSION OF LIABILITY

This Consent Decree shall not be considered an admission of liability by either party for any purpose other than the enforcement of this Consent Decree. This Consent Decree shall not be admissible in any judicial or administrative proceeding between the parties hereto, other than in an action to enforce this Consent Decree. This Consent Decree shall be admissible in any other action, including without limitation an action (1) by ATSF or its representatives or assignees against any other party alleged to be liable to ATSF or its

CONSENT DECREE

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representatives or assigns, or (2) against ATSF's insurers, concerning the obligation of the insurers to pay to ATSF its defense costs in this litigation and its response costs.

XI.

CONSTRUCTION OF DECREE

Nothing in this Consent Decree shall be construed to constitute (1) any undertaking by ATSF to be responsible for the actions of the United States, any other party, or any of their contractors or subcontractors in the implementation of the selected remedies, whether or not such actions are negligent, or (2) an arrangement by ATSF for the disposal or treatment, or for the transportation for the disposal or treatment, of hazardous substances or hazardous wastes.

XII.

MODIFICATIONS

There shall be no modification of this Consent Decree, including modifications deemed necessary by the United States or the Court as a result of public notice and comment, without written agreement of all parties to the Consent Decree and approval by the Court.

XIII.

PUBLIC COMMENT

The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and 28 C.F.R. § 50.7, which provides for notice of the

CONSENT DECREE

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lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. Having executed this Consent Decree, Santa Fe is bound by this Consent Decree unless and until final approval is denied by the United States or the Court.

XIV.

CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of the Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

UNITED STATES DISTRICT JUDGE

CONSENT DECREE

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WE HEREBY CONSENT to the entry of this Consent Decree, 1 2 subject to the specified public notice requirements. 3 FOR SANTA FE DEFENDANTS: THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY 5 By: 6 Its: Vice President - Law and General Counsel 8 CATELLUS DEVELOPMENT CORPORATION 9 (formerly SANTA FE LAND IMPROVEMENT COMPANY) 10 By: 11 Its: 12 13 SANTA FE PACIFIC FOUNDATION (formerly SANTA FE SOUTHERN PACIFIC FOUNDATION) 14 15 By: 16 17 18 SFP PROPERTIES, INC., 19 (formerly SANTA FE INDUSTRIES, INC.) 20 By: 21 Its: 6 Vice President and General Counsel 22 23 24 25 26 27

CONSENT DECREE

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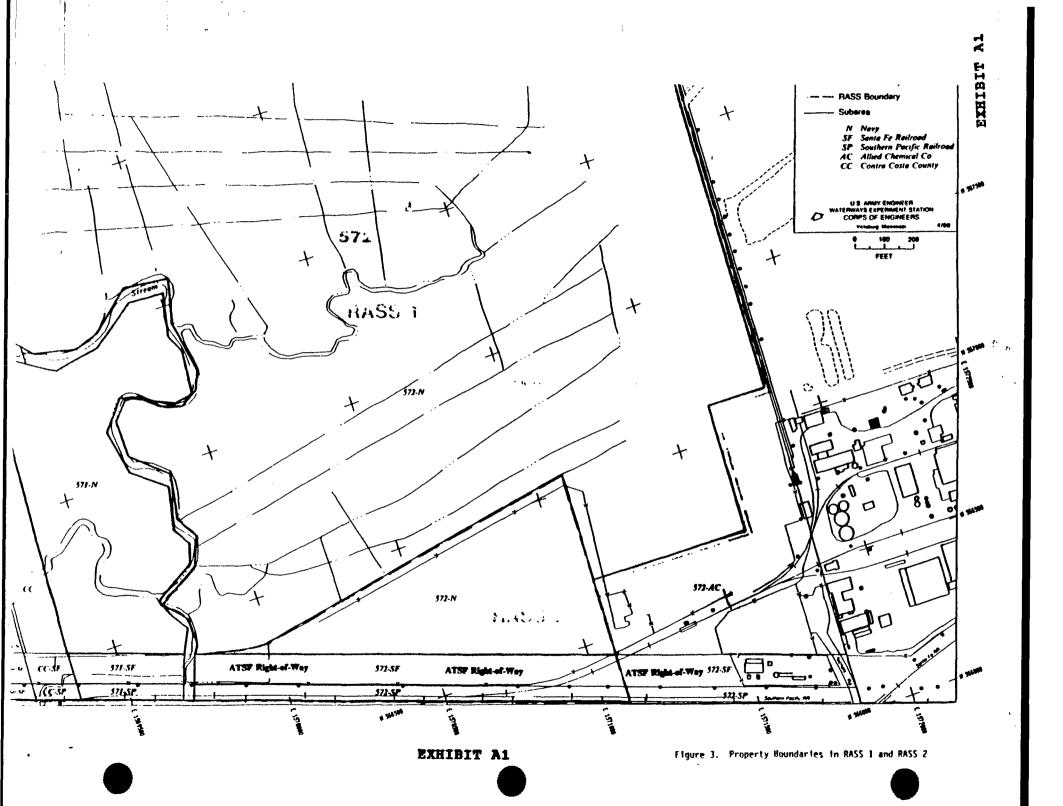
1	we nexest consent to the entry of this Consent Decree
2	subject to the specified public notice requirements.
3	FOR SANTA FE DEFENDANTS:
4	THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
5	Bu.
6	By: Its:
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8	CATELLUS DEVELOPMENT CORPORATION
9	(formerly SANTA FE LAND IMPROVEMENT COMPANY)
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18	SFP PROPERTIES, INC.,
19	(formerly SANTA FE INDUSTRIES, INC.)
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27	CONSENT DECREE - 24 -
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1 FOR UNITED STATES OF AMERICA: 2 3 Department of Justice Department of the Navy 4 5 ROBERTSON Acting Assistant Attorney General Senior Trial Attorney
U.S. Department of Justice Office of the General Counsel 6 7 Environmental & Natural Litigation Office Resources Division Washington, D.C. 20360-5110 8 9 10 JON A. MUELLER Attorney, Environmental Enforcement Section 11 12 WILLIAM T. McGIVERN 13 United States Attorney for Northern District California 14 15 By: LOCKE 16 Assistant United States Attorney 17 18 19 20 21 22 23 24 25 26 27

CONSENT DECREE

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RELEASE AND WAIVER OF LIABILITY

The undersigned hereby acknowledges that he/she has been advised that portions of two rights-of-way which transect Parcels 571, 572, 573, 574, 575, 576, and 579D of the Naval Weapons Station, Concord, California, and which Atchison, Topeka, and Santa Fe Railway Company owns and operates, have been contaminated with substances, including arsenic, cadmium, copper, zinc, lead, and selenium, as more fully described in the Final Report of the Remedial Investigation of Contaminant Mobility at the Naval Weapons Station, Concord, California (January 1986) and the Final Report of the Remedial Investigation of Contaminant Mobility at Naval Weapons Station, Concord, California, Subtitle Appendix 2.5-1986/87 Data (June 1988). The undersigned further acknowledges that he/she has been advised that such substances may be hazardous.

The undersigned, as an individual, hereby assumes liability under Federal, State, and local laws, including but not limited to laws for any act of his/hers which produces hazardous waste as defined in the Resource Conservation and Recovery Act, as amended, during or as a result of his/her entry on the ATSF rights-of-way transecting Parcels 571, 572, 573, 574, 575, 576, and 579D, of the Naval Weapons Station, Concord, California from September 1991 to April 1993.

The undersigned, as an individual, hereby agrees to comply with all applicable Federal, State, and local laws, including but not limited to laws regulating the disposal, storage, and/or transportation for disposal and/or storage of hazardous substances generated by the undersigned and/or accumulated on the boots and/or clothing of the undersigned during his/her entry on the ATSF rights-of-way transecting Parcels 571, 572, 573, 574, 575, 576, and 579D, on the Naval Weapons Station, Concord, from September 1991 to April 1993.

The undersigned, as an individual, releases ATSF from any liability it may have under Federal, State, or local law for any injury or claim incurred by the undersigned on, or as a result of his/her entry on the ATSF rights-of-way transecting Parcels 571, 572, 573, 574, 575, 576, and 579D, on the Naval Weapons Station, Concord, from September 1991 to April 1993.

The undersigned, as an individual, hereby waive any claims which he/she may have against the United States under Federal, State, or local law which may arise from his/her entry on the ATSF rights-of-way transecting Parcels 571, 572, 573, 574, 575, 576, and 579D, on the Naval Weapons Station, Concord, from September 1991 to April 1993.

EXHIBIT B

The undersigned does not purport to waive any claims which the United States may have against Atchison, Topeka and Santa Fe Railway Company.				
Date	Signature			
	[Name of Person signing] (Please	Print)		

EXHIBIT B

RELEASE AND WAIVER OF LIABILITY

[ATSF or the undersigned] hereby acknowledges that it/he/she has been advised that portions of Parcels 571, 572, 573, 574, 575, 576, and 579D of the Naval Weapons Station, Concord, California, have been contaminated with substances, including arsenic, cadmium, copper, zinc, lead, and selenium, as more fully described in the Final Report of the Remedial Investigation of Contaminant Mobility at the Naval Weapons Station, Concord, California (January 1986) and the Final Report of the Remedial Investigation of Contaminant Mobility at Naval Weapons Station, Concord, California, Subtitle Appendix 2.5-1986/87 Data (June 1988). The undersigned further acknowledges that it/he/she has been advised that such substances may be hazardous.

[ATSF or the undersigned] hereby assumes liability under Federal, State, and local laws, including but not limited to laws for any act of its/his/hers which produces hazardous waste as defined in the Resource Conservation and Recovery Act, as amended, during or as a result of its/his/her entry on Parcels 571, 572, 573, 574, 575, 576, and 579D, of the Naval Weapons Station, Concord, California from September 1991 to=April 1993.

[ATSF or the undersigned] hereby agrees to comply with all applicable Federal, State, and local laws, including but not limited to laws regulating the disposal, storage, and/or transportation for disposal and/or storage of hazardous substances generated by the undersigned and/or accumulated on the boots and/or clothing of [ATSF representatives or the undersigned] during its/his/her entry on Parcels 571, 572, 573, 574, 575, 576, and 579D, on the Naval Weapons Station, Concord, from September 1991 to April 1993.

[ATSF or the undersigned] releases the United States from any liability it may have under Federal, State, or local law for any injury or claim incurred by [ATSF or the undersigned] on, or as a result of its/his/her entry on Parcels 571, 572, 573, 574, 575, 576, and 579D, on the Naval Weapons Station, Concord, from September 1991 to April 1993.

[ATSF or the undersigned] hereby waive any claims which it/he/she may have against the United States under Federal, State, or local law which may arise from its/his/her entry on Parcels 571, 572, 573, 574, 575, 576, and 579D, on the Naval Weapons Station, Concord, from September 1991 to April 1993.

Date Signature

[Name of Person signing] (Please Print)

EXHIBIT C

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SEP 1 0 1990

UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff.

v.

ALLIED CORPORATION, et al

Defendants.
AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHEMICAL & PIGMENT COMPANY, et al.

Defendants
AND RELATED CROSS CLAIMS AND
THIRD PARTY CLAIM

Civil Action No. 83-5898 FMS Civil Action No. 83-5896 FMS (CONSOLIDATED CASES)

CONSENT DECREEN DISTRICT OF COLUMN

WHEREAS, plaintiff, the United States of America (United States), by the authority of the Attorney General of the United States and at the request of the Department of Defense, filed a complaint herein against Joseph and Wilda Sobotka (the "Sobotkas") under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No.

99-499, 100 Stat. 1613 (1986), seeking to recover costs previously incurred and to be incurred in the future in responding to the alleged release and threatened release of hazardous substances on parcels of property that are now part of the Naval Weapons Station (NWS) in Concord, California;

WHEREAS, the United States has also alleged damages to natural resources at the NWS and seeks to obtain compensation for any such damages under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C);

whereas, it is alleged that parcel 581 at the NWS was "owned and operated" by the Sobotkas within the meaning of Section 101(20))(A) of CERCLA, 42 U.S.C. § 9601(20)(A), prior to being taken by the United States through condemnation and made a part of the NWS:

WHEREAS, it is alleged in the complaint that hazardous substances were disposed of on parcel 581 during the Sobotkas' period of ownership and operation, and that those alleged releases have and will cause the incurrence of response costs by the United States:

WHEREAS, it is alleged that the Sobotkas accepted hazardous substances for transportation and disposal on parcel 581 at the NWS within the meaning of Section 107(4) of CERCLA, 42 U.S.C. § 9607(4);

WHEREAS, the Sobotkas contend that there is no evidence on which liability by them for the contamination allegedly existing

at the NWS could be based and that a motion for summary adjudication in favor of the Sobotkas based on the absence of such evidence would be successful, but desire to settle this matter without incurring further legal expenses or the delay and risks that would be involved in moving for summary adjudication;

WHEREAS, this settlement shall not be construed in any way to be an admission of fault or liability by the Sobotkas for any purpose; and

WHEREAS, pursuant to Section 122 of CERCLA, 42
U.S.C. § 9622, the Sobotkas and United States have stipulated and agreed to the making and entry of this Consent Decree;

IT IS THEREFORE AGREED BY AND BETWEEN THE UNITED STATES AND THE SOBOTKAS AND HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I.

DEFINITIONS

The following definitions shall apply to this Consent Decree:

- A. "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.
- B. The "Affected Sites" refers to parcels 571, 572, 573, 574, 575, 576, 579D, and 581 at the Naval Weapons Station, Concord, California.

- C. "Parties" refers collectively to all parties who are signatories to this consent decree.
- D. "The "Entry" or "Effective" date shall be the date when this Consent Decree is signed by the Court.
 - E. The term "days" shall mean calender days.
- F. Terms not otherwise defined herein shall have their ordinary meaning unless defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or the National Contingency Plan, 40 C.F.R. Part 300, in which case the definition in CERCLA or the NCP shall control.

II.

JURISDICTION

The complaint states a claim upon which relief may be granted. This Court has jurisdiction over the subject matter of this action and over the parties, and venue is properly in this Court pursuant to Section 103(b) and (e) of CERCLA, 42 U.S.C. § 9613(b) and (e) and 28 U.S.C. § 1345.

III.

PUBLIC INTEREST

The Court finds that entry of this Consent Decree is in the public interest and will expedite response action consistent with the National Contingency Plan.

PARTIES BOUND

The provisions of this Consent Decree shall apply to and be binding upon the parties hereto, their respective officers, directors, agents, trustees, servants, employees, successors, assigns, attorneys, and all persons, firms, and corporations acting under the control or direction of the parties.

v.

PAYMENT

- A. Concurrent with entry of this Consent Decree, the Sobotkas, solely through their insurance carriers, shall pay to the United States the sum of \$250,000. This payment shall be for the purpose of satisfying the Sobotkas' alleged liability under Section 107 of CERCLA at the Affected Sites and shall not be considered to be a penalty, fine or monetary sanction of any kind.
- B. The above-referenced payment shall be by certified or cashier's check or checks payable to the Defense Environmental Restoration Fund and shall be sent to: Deputy Assistant Secretary of Defense (Environment), Room 3D833, Pentagon, Washington, D.C. 20301-8000. A copy of the check shall be provided to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C.

20044, and shall be identified by reference to the action styled United States v. Allied Corp., et al, 90-11-3-26.

c. The amount specified in paragraph A above is being paid by the Sobotkas to resolve their alleged liability to the United States at the Affected Sites. Pursuant to 42 U.S.C. Sections 9613(f)(2) and 9627(h)(4), this Consent Decree does not discharge the liability of any other potentially responsible party which is not a party to this Consent Decree. However, the settlement amount specified in paragraph A above reduces the potential liability for response costs and natural resource damages at PASS 4 of the other defendants alleged by the United States to be liable for such costs and damages by the amount of the settlement. Nothing in this Consent Decree, however, shall limit the ability of the United States to apply the entire \$250,000, and any accrued interest, towards performance of response actions at any of the litigation sites.

VI.

CERTIFICATION OF SETTLING DEFENDANTS

The Sobotkas certify that to the best of their knowledge and belief they have fully and accurately disclosed to the United States all information currently in their possession and in the possession of their agents, which relates in any way to their finances and/or their ability to pay response costs in this matter. Until payment of the notal amount of \$250,000 is completed, the Sobotkas shall continue to make available to the

United States, upon reasonable request, any additional financial records not already furnished to the United States, including, but not limited to, federal, state and local tax filings, and financial statements prepared by them or their agents prior to the date of such request. The Sobotkas have previously furnished such information to the United States subject to a confidentiality agreement and it is understood that any additional information, if requested, shall be subject to the same confidentiality agreement. The United States expressly conditions its consent to this Decree on the accuracy of the foregoing representations.

VII.

COVENANT NOT TO SUE

A. Subject to the reservation of rights under Section
VIII of this Consent Decree, upon payment by the Sobotkas through
their insurance carriers of the amount owed under this Consent
Decree, the United States covenants not to sue or take any other
civil or administrative action against the Sobotkas related to,
or arising from, existing contamination at the Affected Sites.
This covenant not to sue includes claims arising from the removal
of hazardous substances from the affected sites in the course of
any response action taken pursuant to CERCLA including claims
based upon conditions at the Affected Sites that were previously
unknown to the United States, claims for natural resource
damages, nuisance and trepass.

- B. In consideration of the foregoing covenant not to sue and the other agreements contained in this Consent Decree, the Sobotkas covenant not to sue the United States, its employees and contractors for any liability arising out of any activity or expenditure by them in responding to the release or threatened release of hazardous substances at the NWS, including, but not limited to, any claims for contribution or indemnification alleged in the Sobotkas' answer and counterclaim in this action. Upon entry of this Consent Decree, the Sobotkas agree to dismiss their counterclaim against the United States.
- C. This covenant not to sue shall not extend to any person or legal entity other than the Sobotkas, their assigns, predecessors, and successors in interest.
- D. The Sobotkas hereby remise and covenant not to sue the United States for any liability for action taken and expenditures made by the United States, its agents and employees prior to the Effective Date in responding to the release or threatened release of hazardous substances into the environment from the NWS.

 Further, the Sobotkas agree not to assert any causes of action, claims, or demands against the United States for reimbursement from the Hazardous Substances Superfund, 26 U.S.C. § 9507, including claims pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. § 9611, 9612, or assert any other claims or demands for sums paid in settlement of claims which arise prior to the Effective Date. This paragraph shall not be construed as precluding, in any subsequent action other than enforcement of

this Consent Decree, the assertion of (1) any defense available to the Sobotkas, or (2) any release or covenant not to sue obtained in this paragraph.

E. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

VIII.

RESERVATION OF RIGHTS

- A. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States may have against the Sobotkas for:
- (1) any liability as a result of failure to make the payments required by Section V of this Consent Decree; or (2) any and all criminal liability.
- B. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation, or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the NWS. The Sobotkas and the United States expressly reserve the right to sue any person or entity other than the signatories to this Consent Decree with

respect to any matter, including claims relating to the Affected Sites.

IX.

CONTRIBUTION PROTECTION

Upon payment of all monies due and owing the United States under this Consent Decree, the Sobotkas will have resolved their liability to the United States regarding the matters addressed in this Consent Decree and, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), shall not be liable for any claims for contribution regarding such matters.

X.

NO ADMISSION OF LIABILITY

This Consent Decree shall not be considered an admission of liability by the Sobotkas for any purpose other than the enforcement of this Consent Decree. This Consent Decree shall not be admissible in any judicial or administrative proceeding other than an action to enforce this Consent Decree, or an action by the Sobotkas or their representatives or assignees against any other party alleged to be liable to the Sobotkas or their representatives or assigns for contribution, indemnification, or apportionment, or against the Sobotkas' insurers, concerning the obligation of the insurers to pay the Sobotkas' defense costs in this litigation and any sums paid by the Sobotkas to settle this matter.

CONSTRUCTION OF DECREE

Nothing in this Consent Decree shall be construed to constitute (1) any undertaking by the Sobotkas to be responsible for the actions of the United States, any other defendant or any of their contractors or subcontractors in the implementation of the selected remedies, whether or not such actions are negligent, or (2) an arrangement by the Sobotkas for the disposal or treatment, or for the transportation for the disposal or treatment, of hazardous substances or hazardous wastes.

XII.

MODIFICATIONS

There shall be no modification of this Consent Decree, including modifications deemed necessary by the United States or the Court as a result of public notice and comment, without written agreement of all parties to the Consent Decree and the Court.

XIII.

PUBLIC COMMENT

The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal

Register, an opportunity for public comment, and consideration of any comments. Having executed this Consent Decree, the Sobotkas are bound by this Consent Decree unless and until final approval is denied by the United States or the Court.

XIV.

CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of the Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

SEP 1₁ 1990

FERN M. SMITH

DATE

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the specified public notice requirements.

FOR DEFENDANT_JOSEPH SOBOTKA

DANIEL E. LEACH

Attorney

TOSEPH SOBOTES

WILDA SOBOTKA

FOR PLAINTIFF UNITED STATES OF AMERICA:

Department of the Navy

Washington, D.C. 20360-

5110

Counsel

Senior Trial Attorney Assistant Attorney General Office of General Environment & Natural Resources Division Litigation Office U.S. Department of Justice

JOSEPH P. RUSSONIELLO United States Attorney Northern District of California

Department of Justice

BY: Assistant United States Attorney

WILLIAM W. WESTERFIELD, III Attorney, Environmental Enforcement Section

Attorney, Environmental Enforcement Section

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PROOF OF SERVICE

I am a citizen of the United States and a resident of the Northern District of the State of California. I am over the age of eighteen years and not a party to the within above-entitled action. I am a paralegal in the office of the United States Department of Justice, and my business address is 524 Golden Gate Avenue, 2nd Floor, San Francisco, California, 94102. On September 12, 1990, I served a copy of the attached, signed, CONSENT DECREE on the following parties by placing a true copy thereof in a United States Postal Service mailbox with postage prepaid.

SEE ATTACHED LIST OF COUNSEL

I certify under penalty of perjury that the foregoing is true and correct.

Executed on September 12, 1990, at San Francisco, California.

Jay Schweninger

Paralegal

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List of Counsel for Parties in

United States v. Allied Corporation. et al., Civil No. C-83-5898 FMS (N.D. Calif.)

United States v. Chemical & Pigment Co., et al., Civil No. C-83-5896 FMS (N.D. Calif.)

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FAX 213/889-7894 1 Gregory R. McClintock, Esquire 2 Patrick W. Dennis, Esquire Thomas J.P. McHenry, Esquire 3 MCCLINTOCK, WESTON, BENSHOOF, ROCHEFORT, RUBALCAVA & MACCUISH Attorneys for Getty Oil Company 4 444 S. Flower Street, 5th Floor Los Angeles, CA 90071 5 213/623-2322 FAX 213/623/0824 6 Michael L. Whitcomb, Esquire 7 Assistant General Solicitor UNION PACIFIC RAILROAD COMPANY 8 Attorney for Sacramento Northern Railroad Company 5500 Ferguson Drive, Suite "J" 9 Los Angeles, CA 90022 213/725-2400 10 FAX 213/725-2216 11 R. Bruce Hoffe, Esquire Watson, Hoffe & Barbieri 12 P.O. Box 5001 Richmond, CA 94805-2297 13 415/237-3700 FAX 415/237-3714 14 Barry P. Goode, Esquire 15 John D. Edgcomb, Esquire Jane Elizabeth Lovell, Esquire 16 MCCUTCHEN, DOYLE, BROWN & ENERSEN Attorneys for Allied Chemical Corporation and Allied-Signal 17 Corporation Three Embarcadero Center 18 San Francisco, California 94111 415/393-2000 19 FAX 393-2286 20 21 <u>.</u> 22 23 24 25 26

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PROOF OF SERVICE

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIACT 3

2 UNITED STATES OF AMERICA, RICHARD W. WIEKING CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA 3 Plaintiff, 4 Civil Action No. 83-5898 FMS v. 5 ALLIED CORPORATION, et al. 6 Civil Action No. 83-5896 FMS Defendants 7 AND RELATED CROSS CLAIMS AND (CONSOLIDATED CASES) THIRD PARTY CLAIMS 8 UNITED STATES OF AMERICA, 9 Plaintiff, 10 v. 11 CHEMICAL & PIGMENT COMPANY, 12

Defendants AND RELATED CROSS CLAIMS AND

ORDER

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THIRD PARTY CLAIMS

et al.,

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The United States and Southern Pacific Transportation Company have requested that the Court approve a consent decree entered into between Southern Pacific Transportation Company and the United States. The Consent Decree has been lodged with the Court for over thirty days and a notice of such lodging was published in the Federal Register. The parties represent that no comments have been submitted with respect to this consent decree.

ENTEPEN

The Court having reviewed the Consent Decree and the motion of the United States and Southern Pacific Transportation Company, and good cause appearing therefore

IT IS ORDERED, ADJUDGED, AND DECREED that the Consent

Decree between the United States and Southern Pacific Transportation Company is hereby approved and entered as a final order of this Court. Date: Oct 10. ORDER

UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA, Plaintiff, Civil Action No. 83-5898 FMS v. Civil Action No. 83-5896 FMS ALLIED CORPORATION. et al., (CONSOLIDATED CASES) Defendants. AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS UNITED STATES OF AMERICA, Plaintiff, v. CONSENT DECREE CHEMICAL & PIGMENT COMPANY, et al., Defendants. AND RELATED CROSS CLAIMS AND THIRD PARTY CLAIMS

WHEREAS, plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and at the request of the Department of the Navy, filed a complaint herein against Southern Pacific Transportation Company ("SPTC") under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613 (1986),

seeking to recover costs previously incurred and to be incurred in the future in responding to the alleged release and threatened release of hazardous substances on parcels of property that are now part of the Naval Weapons Station ("NWS") in Concord, California;

WHEREAS, the United States also alleged damages to natural resources at the NWS and seeks to obtain compensation for such damages under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C);

WHEREAS, a certain SPTC right-of-way at the NWS was and is "owned and operated" by SPTC within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A);

WHEREAS, the United States also alleged nuisance and trespass at the NWS and seeks to obtain injunctive relief requiring SPTC to undertake remediation to prevent the release and threatened release of hazardous substances onto the NWS from the adjacent SPTC right-of-way.

WHEREAS, it is alleged in the complaint that there were releases of hazardous substances on and from this right-of-way, and that those releases have and will cause the incurrence of response costs by the United States;

WHEREAS, SPTC contends that it is not liable for the contamination allegedly existing at the NWS, but desires to settle this matter without incurring further legal expenses or the delay and risks that would be involved in moving for summary adjudication or going to trial on the merits;

WHEREAS, this settlement shall not be construed in any way to be an admission of fault or liability by SPTC for any purpose;

WHEREAS, pursuant to Section 122(g) of CERCLA, 42
U.S.C. § 9622(g), SPTC and the United States have stipulated
and agreed to the making and entry of this Consent Decree; and

WHEREAS, pursuant to Section 122(j)(2) of CERCLA, 42 U.S.C. § 9622(j)(2), the Federal Natural Resources Trustee has agreed in writing to a covenant not to sue under Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C);

IT IS THEREFORE AGREED BY AND BETWEEN THE UNITED STATES AND SPTC, AND HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I.

DEFINITIONS

The following definitions shall apply to this Consent Decree:

- A. "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.
- B. The "Affected Sites" refers to Parcels 572, 573, 574, 575, 576, 579D, and 581 at the Naval Weapons Station, Concord, California.
- C. "Parties" refers collectively to all parties who are signatories to this consent Decree.

- D. The "Entry" date shall be the date when this Consent Decree is signed by the Court.
 - E. The term "days" shall mean calender days.
- F. "Final Remedial Action Plan" means the Plan selected by the United States Department of the Navy on April 6, 1989, for the remediation of hazardous substance contamination and the effects thereof on Parcels 572, 573, 574, 575, 576, 579D, and 581 on the Naval Weapons Station ("NWS"), Concord, California.
- G. "Record of Decision" ("ROD"), means the Record of Decision of the selection of the Final Remedial Action Plan by the United States Department of the Navy. on April 6, 1989, pursuant to Sections 104, 120, and 121 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), in response to the release and threatened release of hazardous substances on Parcels 572, 573, 574, 575, 576, 579D, and 581 on the NWS.
- H. "SPTC" shall mean the Southern Pacific Transportation Company.
- I. Terms not otherwise defined herein shall have their ordinary meaning unless defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or the National Contingency Plan, 40 C.F.R. Part 300, in which case the definition in CERCLA or the NCP shall control.

JURISDICTION

The complaint states a claim upon which relief may be granted. This Court has jurisdiction over the subject matter of this action and over the parties, and venue is properly in this Court pursuant to Section 113(b) and (e) of CERCLA, 42 U.S.C. §9613(b) and (e) and 28 U.S.C. § 1345.

III.

PUBLIC INTEREST

The Court finds that entry of this Consent Decree is in the public interest and will expedite response action consistent with the National Contingency Plan.

IV.

PARTIES BOUND

The provisions of this Consent Decree shall apply to and be binding upon the parties hereto, their respective officers, directors, agents, trustees, servants, employees, successors, assigns, attorneys, and all persons, firms, and corporations acting under the control or direction of the parties. The undersigned representatives of SPTC certify that they are fully authorized by SPTC to enter into the terms and conditions of this Consent Decree and to legally bind SPTC. The undersigned representatives of the United States certify that they are collectively authorized to enter into this

Consent Decree and to legally bind the United States, subject to the provisions of Section XIII of this Consent Decree.

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PAYMENT

- A. Within 60 days of the entry of this Consent Decree, SPTC shall pay to the Defense Environmental Restoration Fund the sum of \$43,320 plus \$1,977 = \$45,297.00. This payment shall be for the purpose of satisfying SPTC's alleged liability under Section 107 of CERCLA at the affected sites, including liability for natural resource damages, and shall not be considered to be a penalty, fine or monetary sanction of any kind.
- B. The above-referenced payment shall be by certified or cashier's check payable to the Defense Environmental Restoration Fund and shall be sent to: Deputy Assistant Secretary of Defense (Environment), Room 3D833, Pentagon, Washington, D.C. 20301-8000. Copies of the check shall be provided to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and identified as <u>United States v. Allied Corporation</u>, et al. 90-11-3-26, and to the Associate General Counsel (Litigation), Office of the General Counsel, Department of the Navy, Washington, D.C. 20360.
- C. In the event that SPTC should fail to pay any sum due and owing under this Consent Decree, then without further

order of the Court this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with Federal Rule of Civil Procedure 69, and other applicable authority. Should SPTC fail to pay any amount due and owing under this Consent Decree on a timely basis, SPTC shall be liable to the United States for interest on the amount owed until the entire sum is collected and for all costs and attorney fees incurred by the United States in collecting any sum owed. The rate of interest shall be the same rate and calculated in the same manner as is set forth in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

VI.

REMEDIAL RELIEF

A. SPTC shall undertake the remediation which the Navy determined must be undertaken on the SPTC right-of-way adjacent to Parcels 573, 574, and 575 on the NWS in the Final Remedial Action Plan selected by the United States Department of the Navy on April 6, 1989, and the ROD of April 6, 1989. Such remediation shall consist of collection and analysis of samples and excavation, removal, and disposal of soil which exceeds either the TTLC/STLC criteria or the statistically above reference area criteria specified in the Final Remedial Action Plan and as specifically required by Section 02100, Parts 1.4.6., 1.4.7, and 3.3. and Section 02226, Part 3.3 of the document entitled "100 Percent Plans and Specifications for the Southern Pacific Transportation Company Right-of-Way".

B. The TTLC/STLC criteria referred to above are:

STATE OF CALIFORNIA THRESHOLD LIMIT CONCENTRATIONS (WET WEIGHT BASIS)

PARAMETER	TOTAL THRESHOLD LIMIT CONCEN- TRATION (TTLC)- mg/kg	SOLUBLE THRESHOLD LIMIT CONCEN- TRATION (STLC)- mg/kg
Arsenic	500	5.0
Cadmium	100	1.0
Copper	250 0	25
Lead	1000	5.0
Selenium	100	1.0
Zinc	50 00	250

C. The statistically above reference area criteria referred to above are:

STATISTICALLY ABOVE REFERENCE AREA CRITERIA FOR SOIL (DRY WEIGHT BASIS)

PARAMETER	STATISTICALLY ABOVE REFERENCE AREA CONCENTRATION ppm
Arsenic Cadmium Copper	544.2 12.7 344.6
Lead Selenium	
Zinc	2,511.4

D. SPTC shall complete the remediation, which is specified in the 100 Percent Plans and Specifications for the Southern Pacific Transportation Company Right-Of-Way, within thirty (30) days after the date the Navy completes the excavation and removal of soil from RASS 3 on the NWS, assuming the preconditions set forth in Paragraph VI.F have been fully met. The Navy shall give SPTC thirty days notice of the Navy's mobilizing a contractor to undertake the

excavation, removal, and disposal of soil on RASS's 1, 2, and 3 on the NWS. SPTC shall coordinate with the Navy to insure that cleanup on its right-of-way is undertaken in a safe and environmentally protective manner.

- E. The Navy shall undertake monitoring on the SPTC right-of-way adjacent to Parcels 573, 574, and 575 on the NWS for five years. The five year period shall begin upon completion of the remedial action to be undertaken on the SPTC right-of-way. The monitoring shall include the collection of soil samples from the SPTC right-of-way and the analysis of such samples. The Navy shall give SPTC fifteen (15) days notice of collecting such soil samples on the SPTC right-of-way, and SPTC shall have the right to split samples upon request. SPTC shall grant the Navy the right to enter the SPTC right-of-way to collect such soil samples as provided for and pursuant to Exhibit A attached hereto. SPTC shall not be required to undertake monitoring on the SPTC right-of-way independent of the Navy's monitoring.
- F. SPTC shall not be required to undertake the excavation, removal, and disposal of soil which exceeds either TTLC/STLC criteria or the statistically above reference area criteria specified in the Final Remedial Action Plan until remediation is undertaken on the Chemical & Pigment Company property, located at 600 Nichols Road, Pittsburg, California, sufficient to prevent the release and threatened release of

hazardous substances onto the NWS and onto SPTC's right-of-way from the Chemical & Pigment Company facility.

- G. During the five years following completion of the remediation on the SPTC right-of-way, SPTC shall give the Public Works Officer at NWS 30 days notice of mobilizing a contractor to excavate soil, install or, remove culverts, or alter or modify the drainage on its rights-of-way unless such work must be undertaken on an emergency basis. If such work must be undertaken on an emergency basis, SPTC shall give the Public Works Officer at the NWS reasonable notice. Notice of work performed on an emergency basis will be considered reasonable if given within five (5) working days after such work has been performed.
- H. The remediation specified herein shall be for the purpose of satisfying SPTC's alleged CERCLA liability to the United States on the SPTC right-of-way, including SPTC's alleged liability in (1) nuisance and in (2) trespass.
- I. The United States shall have the right to enter and inspect the premises at any time upon reasonable notice to SPTC for purposes of insuring compliance with this Consent Decree.
- J. SPTC shall only be required to comply with the terms of this Section VI if the United States undertakes environmental response activities on the NWS.
- K. The Navy will provide SPTC with the names of the contractors retained to perform remedial activities on the NWS

within a reasonable period after contracts to perform such work for the Navy have been let.

L. The Navy shall grant SPTC the right to enter the NWS to conduct the remediation on the SPTC right-of-way upon fifteen (15) days notice to the Navy and subsequent approval by the Security Office at the NWS, and upon the execution of releases and waivers of liability substantially in the form attached hereto as Exhibit B by SPTC and each of the persons entering the NWS.

VII.

COVENANT NOT TO SUE

- A. Subject to the reservation of rights under Section VIII of this Consent Decree, upon payment by SPTC of the amount owed under this Consent Decree and completion of remedial action on the SPTC right-of-way by SPTC, the United States covenants not to sue or take any other civil or administrative action against SPTC its officers, directors, shareholders, agents and employees related to, or arising from, existing contamination at the Affected Sites. This covenant not to sue includes claims for natural resource damages and claims arising from the removal of hazardous substances from the Affected Sites in the course of any response action taken pursuant to CERCLA.
- B. In consideration of the foregoing covenant not to sue and the other agréements contained in this Consent Decree,

SPTC covenants not to sue the United States, its officers, employees and contractors for any liability arising out of any activity or expenditure by them in responding to the release or threatened release of hazardous substances at the NWS, including, but not limited to, any claims for contribution or indemnification.

VIII.

RESERVATION OF RIGHTS

- A. Nothing in this Consent Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States may have against SPTC, its officers, directors, shareholders, agents and employees for:
- (1) any liability as a result of failure to make the payments required by Section V of this Consent Decree; or (2) any and all criminal liability.
- B. Nothing in this Consent Decree constitutes a covenant not to sue or otherwise limits the ability of the United States to seek or obtain further relief from SPTC and the covenant not to sue in Section VII above is null and void, if the United States determines, based upon conditions at the Affected Sites that were previously unknown to the United States, or information received, in whole or part, after the Entry Date, that response actions taken at the Parcels 572,

573, 574, 575, 576, 579D, and 581 on the NWS are not protective of the public health or the environment.

- C. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation, or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the NWS. SPTC and the United States expressly reserve the right to sue any person or entity other than the signatories to this Consent Decree with respect to any matter, including claims relating to the affected sites.
- D. The covenant not to sue set forth in Section VII above, shall not extend to any person or legal entity other than SPTC, its predecessors, and successors in interest, and its subsidiaries, divisions, parent corporations, and affiliates.
- E. SPTC hereby remises and covenants not to sue the United States for any liability for action taken and expenditures made by the United States, its agents and employees prior to the Entry Date in responding to the release or threatened release of hazardous substances into the environment from the NWS. Further, SPTC agrees not to assert any causes of action, claims, or demands against the United States for reimbursement from the Hazardous Substances Superfund, 26 U.S.C. § 9507, including claims pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. §§ 9611, 9612, or

assert any other claims or demands for sums paid in settlement of claims. This paragraph shall not be construed as precluding, in any subsequent action other than enforcement of this Consent Decree, the assertion of (1) any defense available to SPTC, or (2) any release or covenant not to sue obtained in this paragraph.

F. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

IX.

CONTRIBUTION PROTECTION

Upon payment of all monies due and owing the United States under this Consent Decree and performance by SPTC of remedial actions required by the consent decree, SPTC will have resolved its liability to the United States regarding the matters addressed in this Consent Decree and, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), shall not be liable for any claims for contribution regarding such matters.

x.

NO ADMISSION OF LIABILITY

This Consent Decree shall not be considered an admission of liability by SPTC for any purpose other than the enforcement of this Consent Decree. This Consent Decree shall not be admissible in any judicial or administrative proceeding

other than an action to enforce this Consent Decree, or an action by SPTC or its representatives or assignees against any other party alleged to be liable to SPTC or its representatives or assigns for contribution, indemnification, or apportionment, or against SPTC's insurers, concerning the obligation of the insurers to pay to SPTC its defense costs in this litigation and any sums paid by SPTC to settle this matter.

XI.

CONSTRUCTION OF DECREE

Nothing in this Consent Decree shall be construed to constitute (1) any undertaking by SPTC to be responsible for the actions of the United States, any other defendant or any of their contractors or subcontractors in the implementation of the selected remedies, whether or not such actions are negligent, or (2) an arrangement by SPTC for the disposal or treatment, or for the transportation for the disposal or treatment, of hazardous substances or hazardous wastes.

xÌİ.

MODIFICATIONS

There shall be no modification of this Consent Decree, including modifications deemed necessary by the United States or the Court as a result of public notice and comment, without written agreement of all parties to the Consent Decree and the Court.

XIII.

PUBLIC COMMENT

The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. Having executed this Consent Decree, SPTC is bound by this Consent Decree unless and until final approval is denied by the United States or the Court.

· XIV.

CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of the Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

DATE

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the specified public notice requirements.

FOR DEFENDANT SOUTHERN PACIFIC TRANSPORTATION COMPANY

FOR PLAINTIFF UNITED STATES OF AMERICA:

Department of Justice	Department of the Navy
And Va Clay for	
BARRY M. HARTMAN L	J. MARTIN ROBERTSON
Acting Assistant Attorney General Environment & Natural Resources	Senior Trial Attorney
	Office of General Counsel
Division	Litigation Office
U.S. Department of Justice	Washington, D.C. 20360-5110
Don't ll	
C. M. Mueller	
JON A. MUELLER	
Attorney, Environmental Enforcement Section	
JOSEPH P. RUSSONIELLO	
United States Attorney	
Northern District of California	
•	
By:	
Assistant United States Attorney	,

FOR PLAINTIFF UNITED STATES OF AMERICA:

Department of Justice

Department of the Navy

BARRY M. HARTMAN

Acting Assistant Attorney General Environment & Natural Resources Division

U.S. Department of Justice

J. MARTIN ROBERTSON Senior Trial Attorney Office of the General

Counsel Litigation Office

Washington, D.C. 20360-

5110

JON A. MUELLER

Attorney, Environmental Enforcement Section

WILLIAM T. McGIVERN
United States Attorney

Northern District of California

BY:

PAUL E. LOCKE

Assistant United States Attorney

Exhibit A

Southern Pacific Transportation Company (Railroad), subject to the following terms and conditions hereby permits Department of the Navy (Navy) to enter upon Railroad's property in the vicinity of Nichols Road, in the County of Contra Costa, in the State of California, for the purpose of performing environmental sampling.

In performing said work Navy and/or its contractor's forces shall use only public roadways to cross mechanized equipment from one side of Railroad's tracks to the other.

All work shall be done in a good and workmanlike manner at the sole cost and expense of Navy and to the satisfaction of Railroad. The tracks, communication lines and other facilities of Railroad will not be interfered with and the work will be so prosecuted that there will be no interference with or delay to the operations of Railroad.

Navy shall obtain written consent of any lessee, licensee or grantee of Railroad at the time in possession of any of the land included hereunder.

In view of the possible existence of subsurface pipelines or other structures, Navy shall, for each test hole, explore for such structures with hand tools to a depth of at least eight (8) feet below the surface of the ground or at Navy's option utilize suitable metal detecting equipment prior to drilling or excavating with mechanized equipment. Railroad does not warrant there are no structures below said level and Navy's operations will be subject at all times to the liability provisions herein.

In addition to other provisions of this agreement requiring Navy to give notice prior to commencing work, Navy shall telephone Railroad at 1-800-283-4237 (a 24-hour number) to determine if a telecommunications system is buried anywhere on or about the premises defined or included herein. If it is, Navy will telephone the owner of the system designated by Railroad, arrange for a cable locator and make arrangements for relocation or other protection for the system prior to beginning any work on the said premises.

Navy shall furnish Railroad with a copy of all soil and water data and analysis obtained from tests thereof.

Any contractors performing work on the premises of Railroad, and/or persons entering the premises to read gauges, etc. on behalf of Navy shall be deemed the agents of Navy.

Drilling operations in connection with test holes shall be no less than fifteen (15) feet from the center line of any track and at no times will cables or equipment of any nature be located less than fifteen (15) feet from the center line of any track.

All open holes will be satisfactorily covered and locked at all times when Navy's forces are not physically working in the actual vicinity thereof.

It is agreed and understood that upon completion of work covered hereunder, Navy will remove all equipment from Railroad's property and leave the property in a neat and safe condition satisfactory to Railroad. Without limiting the foregoing, Navy shall remove all well casings, shall fill the borings with grout, and shall take any additional action necessary to close the wells required by state or regulation or by any government agency having jurisdiction.

Navy shall, at its expense, comply with all laws, regulations, rules and orders which are applicable to work done hereunder or result from such work, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality and furnish satisfactory evidence of such compliance upon request of Railroad.

Navy agrees to cooperate to the extent allowed by law, in the submittal of all claims for alleged loss, injuries, or damages to persons or property arising from the acts of Navy's contractors performing work within the scope of this permit pursuant to the Federal Tort Claims Act (28 U.S.C., Sec. 2671 et seq.).

Permission herein given shall be effective only if accepted at the time the Consent Decree between the United States

and Railroad in <u>United States v. Allied Corporation</u> is filed, and, if so accepted, shall be effective for a period of five (5) years thereafter. Navy agrees to notify Railroad's Regional Offices by letter on facsimile No. (213) 780-6959 at least seven days prior to commencing any work on the premises of Railroad pursuant to this permission.

A duplicate original of Exhibit 1 shall be signed and sent to David W. Long, Esq., Southern Pacific Company, One Market Plaza, Room 814, San Francisco, California 94105. After the notice provided for above, the Navy may exercise the permission herein give.

AGREED TO A	ND	ACCI	EPTE	ED	THIS
DAY OF				19	91.
DEPARTMENT	OF	THE	NAV	YY.	
Ву					
(Title)					

11

RELEASE AND WAIVER OF LIABILITY

[SPTC or the undersigned] hereby acknowledges that it/he/she has been advised that portions of Parcels 571, 572, 573, 574, 575, 576, and 579D of the Naval Weapons Station, Concord, California, have been contaminated with substances, including arsenic, cadmium, copper, zinc, lead, and selenium, as more fully described in the Final Report of the Remedial Investigation of Contaminant Mobility at the Naval Weapons Station, Concord, California (January 1986) and the Final Report of the Remedial Investigation of Contaminant Mobility at Naval Weapons Station, Concord, California, Subtitle Appendix 2.5-1986/87 Data (June 1938). The undersigned further acknowledges that it/he/she has been advised that such substances may be hazardous.

[SPTC or the undersigned] hereby assumes liability under Federal, State, and local laws for any act of its/his/hers which produces hazardous waste as defined in the Resource Conservation and Recovery Act, as amended, during or as a result of its/his/her entry on Parcels 571, 572, 573, 574, 575, 576, and 579D, of the Naval Weapons Station, Concord, California on 1991.

[SPTC or the undersigned] hereby waive any claims which it/he/she may have against the United States under Federal, State, or local law which may arise from its/his/her acts or omissions during its/his/her entry on Parcels 571, 572, 573, 574, 575, 576, and 579D, on the Naval Weapons Station, Concord, on 1991.

à	t	ē

Signature

[Name of Person signing] (Please Print)

11



DEPARTMENT OF THE NAVY OFFICE OF THE GENERAL COUNSEL WASHINGTON, D.C. 20360-5110



11 December 1991

By Federal Express

Steven Ritchie
Executive Officer
State of California
Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

RE: <u>United States v. Allied Corporation, et al.</u>, Civil No. C-83-5898 FMS (N.D. Calif.)

<u>United States v. Chemical & Pigment Co., et al.</u>, Civil No. C-83-5896 FMS (N.D. Calif.)

Dear Mr. Ritchie:

On 13 November 1991, the United States District Court for the Northern District of California entered the seventh and last of the seven consent decrees memorializing settlements between the United States and the fourteen defendants in the above referenced cases.

As you know, the Department of the Navy selected a final remedial action plan for Parcels 572, 573, 574, 575, 576, 579D, and 581 on the Naval Weapons Station, in Concord, California, under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, on 6 April 1989. The Western Division, Naval Facilities Engineering Command, has nearly completed the design of the remedy for these parcels.

Entry of the consent decrees will allow the Navy to carry out the cleanup on these parcels next year. Under the terms of the decrees, the defendants in the litigation must pay the Navy approximately \$11.7 million, which is seventy percent of the estimated cost of carrying out the remedial action on these parcels. In addition, under the terms of the decrees, the five defendants that own contaminated properties adjacent to the contaminated parcels on the station must clean up their properties in coordination with the cleanup on the station. Two of the decrees require Allied-Signal, Inc., and Chemical & Pigment Company to clean up portions of their industrial facilities adjacent to the station. Three other decrees require Sacramento Northern Railroad Company; Atchison, Topeka, and Santa Fe Railway Company; and Southern Pacific Transportation Company to clean up their four rights of way that transect the station.

For your information, I am enclosing a notebook which contains the seven consent

Steven Ritchie 11 December 1991 Page 2

decrees settling these cases. If you have any questions concerning the decrees, please contact me at the address or telephone listed below.

Sincerely,

J. MARTIN ROBERTSON

Senior Trial Attorney Department of the Navy

Office of the General Counsel

Litigation Office ' '

c/o: Acumenics Research & Technology

90 New Montgomery, 5th Floor

San Francisco, CA 94105

(415) 777-0283

Enclosure

Copy furnished:

Captain Richard L. Owens, WPNSTA Concord Captain Robert Moeller, WESTDIV Donald D. Dalke, RWQCB Gary Grimm, RWQCB



DEPARTMENT OF THE NAVYOFFICE OF THE GENERAL COUNSEL WASHINGTON, D.C. 20360-5110



11 December 1991

By Federal Express

Howard Hatayama
State of California
Department of Health Services
Toxic Substances Control Division
Region 2
700 Heinz Avenue, Blvd. F, Suite 200
Berkeley, CA 94710

RE: <u>United States v. Allied Corporation, et al.</u>, Civil No. C-83-5898 FMS (N.D. Calif.)

<u>United States v. Chemical & Pigment Co., et al.</u>, Civil No. C-83-5896 FMS (N.D. Calif.)

Dear Mr. Hatayama:

On 13 November 1991, the United States District Court for the Northern District of California entered the seventh and last of the seven consent decrees memorializing settlements between the United States and the fourteen defendants in the above referenced cases.

As you know, the Department of the Navy selected a final remedial action plan for Parcels 572, 573, 574, 575, 576, 579D, and 581 on the Naval Weapons Station, in Concord, California, under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, on 6 April 1989. The Western Division, Naval Facilities Engineering Command, has nearly completed the design of the remedy for these parcels.

Entry of the consent decrees will allow the Navy to carry out the cleanup on these parcels next year. Under the terms of the decrees, the defendants in the litigation must pay the Navy approximately \$11.7 million, which is seventy percent of the estimated cost of carrying out the remedial action on these parcels. In addition, under the terms of the decrees, the five defendants that own contaminated properties adjacent to the contaminated parcels on the station must clean up their properties in coordination with the cleanup on the station. Two of the decrees require Allied-Signal, Inc., and Chemical & Pigment Company to clean up portions of their industrial facilities adjacent to the station. Three other decrees require Sacramento Northern Railroad Company; Atchison, Topeka, and Santa Fe Railway Company; and Southern Pacific Transportation Company to clean up their four rights of way that transect the station.

For your information, I am enclosing a notebook which contains the seven consent

Howard Hatayama 11 December 1991 Page 2

decrees settling these cases. If you have any questions concerning the decrees, please contact me at the address or telephone listed below.

Sincerely,

J. MARTIN ROBERTSON
Senior Trial Attorney
Department of the Navy
Office of the General Counsel

Litigation Office _ ' '

c/o: Acumenics Research & Technology 90 New Montgomery, 5th Floor San Francisco, CA 94105

(415) 777-0283

Enclosure

Copy furnished:

Captain Richard L. Owens, WPNSTA Concord Captain Robert Moeller, WESTDIV



LITIGATION OFFICE

DEPARTMENT OF THE NAVY OFFICE OF THE GENERAL COUNSEL WASHINGTON, D.C. 20360-5110



30 July 1991

By Hand Delivery

Mary Gillespie, Esquire
Office of Counsel
San Francisco District
U.S. Army Corps of Engineers
211 Main Street
San Francisco, CA 94105-1905

RE: <u>United States v. Allied Corporation, et al.</u>, Civil No. C-83-5898 FMS (N.D. Calif.)

United States v. Chemical & Pigment Co., et al., Civil
No. C-83-5896 FMS (N.D. Calif.)

Dear Mary:

At the meeting on 15 July 1991, you requested that we provide you with copies of the consent decrees in the above referenced cases.

I am enclosing two tabbed binders. Each binder contains the three decrees already entered by the Court and the three other decrees which representatives of other defendants, but not representatives of the government, have signed.

Our consent decree with Allied-Signal, Inc., which the Court entered on 8 April 1991, is contained in Tab 1 of the notebook. Section XI of the decree requires Allied-Signal to undertake remedial action on the property depicted on Exhibit Al¹ to the decree.

Our decree with Chemical & Pigment Company, O.E. Cooper, ESI Chemicals, Inc., and Earth Sciences, Inc., which has been signed by representatives of thee defendants, is contained in Tab 2 of the notebook. Section XI of the Decree requires Chemical & Pigment Company to undertake remedial action on its facility.²

¹ The 8 April 1991 order entering the decree substituted Exhibit A1 for Exhibit A.

² Although this consent decree has not been signed by representatives of the government, Section XVIII of the decree provides that the defendants whose representatives signed the decree are bound by it unless and until final approval is denied by the United States or the Court.

Mary Gillespie, Esquire 30 July 1991 Page 2

Our decree with Sacramento Northern Railroad Company, which has been signed by a representative of SNRR, is contained in Tab 4 of the notebook. Section VI of the decree requires SNRR to undertake remedial action on its right-of-way.³

Our decree with Southern Pacific Transportation Company, which has been signed by a representative of SPTC, is contained in Tab 7 of the notebook. Section VI of the decree requires SPTC to undertake remedial action on its right-of-way.

Please contact me if you have any questions about the enclosed consent decrees.

Sincerely,

J / MARTIN ROBERTSON

Department of the Navy

Office of the General Counsel

Litigation Office

c/o: Acumenics

90 New Montgomery, 5th Floor

San Francisco, CA 94105

415/777-0283

Enclosures

Copy furnished:

Elizabeth Gibeau, WESTDIV Richard Pieper, WPNSTA Concord

³ Section XIII of the decree provides SNRR is bound by the decree unless and until final approval is denied by the United States or the Court.

⁴ Section XIII of this decree provides that SPTC is bound by the decree unless and until final approval is denied by the United States or the Court.



DEPARTMENT OF THE NAVY OFFICE OF THE GENERAL COUNSEL WASHINGTON, D.C. 20360-5110



21 August 1991

By Hand Delivery

Mary Gillespie, Esquire
Office of Counsel
San Francisco District
U.S. Army Corps of Engineers
211 Main Street
San Francisco, CA 94105-1905

RE: <u>United States v. Allied Corporation, et al.</u>, Civil No. C-83-5898 FMS (N.D. Calif.)

United States v. Chemical & Pigment Co., et al., Civil No. C-83-5896 FMS (N.D. Calif.)

Dear Mary:

By the enclosed letter of 30 July 1991, I transmitted two binders to you which contained three consent decrees entered by the Court and three other decrees which representatives of the defendants had signed. 1

I am enclosing two copies of our consent decree with Atchison, Topeka, and Santa Fe Railway Company; Santa Fe Southern Pacific Foundation; Santa Fe Land Improvement Company; and Santa Fe Industries, Inc., which representatives of these defendants, but not representatives of the government, have signed. Please insert one of these decrees behind Tab 5 in each of the binders I sent you previously.

Section VI of our decree with the Santa Fe defendants requires ATSF to undertake remedial action on two rights-of-way which transect Parcels 572, 573, 574, 575, 576, and 579D on the Naval Weapons Station, Concord. Section XIII of this decree provides that ATSF is bound by the decree unless and until final approval is denied by the United States.

Representatives of the government signed our decree with Chemical & Pigment Company, O.E. Cooper, ESI Chemicals, Inc., and Earth Sciences, Inc.; our decree with Sacramento Northern Railroad Company; and our decree with Southern Pacific Transportation Company after I transmitted the binders to you. On 9 August 1991, I lodged these three decrees with the Court. After allowing the public thirty days to comment on these decrees, we will move the Court to enter these decrees unless comments which we receive warrant that we do otherwise.

Mary Gillespie, Esquire 21 August 1991 Page 2

Please contact me if you have any questions about the enclosed consent decrees.

Sincerely,

J. MARTIN ROBERTSON
Senior Trial Attorney
Department of the Navy
Office of the General Counsel
Litigation Office
c/o: Acumenics Research & Technology
90 New Montgomery, 5th Floor
San Francisco, CA 94105

(415) 777-0283

Enclosures

Copy furnished:

Elizabeth Gibeau, WESTDIV (with enclosure) Richard Pieper, WPNSTA Concord

£ji.



DEPARTMENT OF THE NAVY OFFICE OF THE GENERAL COUNSEL WASHINGTON, D.C. 20360-5110



19 November 1991

By Hand Delivery

Ralph Mihan, Esquire
Field Solicitors Office
Department of the Interior
600 Harrison Street, Suite 545
San Francisco, CA 94107

RE: <u>United States v. Allied Corporation, et al.</u>, Civil No. C-83-5898 FMS (N.D. Calif.)

<u>United States v. Chemical & Pigment Co., et al.</u>, Civil No. C-83-5896 FMS (N.D. Calif.)

Dear Ralph:

On 13 November 1991, the Court entered the seventh and last of the seven consent decrees in the above referenced cases.

As I promised earlier this year, I am enclosing a notebook containing each of the seven consent decrees and the Court's orders entering the decrees. Five of the decrees require parties that own land adjacent to Parcels 572, 573, 574, 575, 576, 579D, and 581 on the Naval Weapons Station, Concord, must remediate their properties in coordination with the Navy's remediation of these parcels on the station.

- 1. Section XI of the decree with Allied-Signal, Inc., requires Allied-Signal to remediate its property adjacent to Parcel 572 on the station.
- 2. Section XI of the decree with Chemical & Pigment Company, O.E. Cooper, ESI Chemicals, Inc., and Earth Sciences, Inc., requires Chemical & Pigment to remediate its property adjacent to Parcels 579D and 576 on the station.
- 3. Section VI of the decree with Sacramento Northern Railroad Company (SNRR) requires SNRR to remediate its right-of-way which transects Parcels 573, 574, 575, 576, and 579D on the station.
- 4. Section VI of the decree with Atchison, Topeka, and Santa Fe Railway Company (ATSF), Santa Fe Southern Pacific Foundation, Santa Fe Land Improvement Company, and Santa Fe Industries, Inc., requires ATSF to remediate its two rights-of-way which transect Parcels 572, 573, 574, 575, 576, and 579D on the station.
- 5. Section VI of the decree with Southern Pacific Transportation Company (SPTC) requires SPTC to remediate its right-of-way which transects Parcels 572,

Ralph Mihan 19 November 1991 Page 2

573, 574, and 575 on the station.

I suggest that you keep the notebook available until the remediation has been completed by the Navy, Allied-Signal, Chemical & Pigment, SNRR, ATSF, and SPTC to facilitate the resolution of any disputes that arise in the course of implementing the remedial actions. Because Jack Burke worked with us on the litigation in earlier years, I would appreciate it if you would let him know that the Court has entered consent decrees resolving all of the Navy's claims in these cases.

Sincerely,

J/ MARTIN ROBERTSON

Senior Trial Attorney
Department of the Navy

Office of the General Counsel

Litigation Office

c/o: Acumenics Research & Technology

90 New Montgomery, 5th Floor

San Francisco, CA 94105

(415) 777-0283

Enclosure

Copy furnished (with enclosure):

Peter Sorenson, FWS



DEPARTMENT OF THE NAVY OFFICE OF THE GENERAL COUNSEL WASHINGTON, D.C. 20360-5110



4 December 1991

By Hand Delivery

Paul Locke
Chief, Environment and Natural Resources Division
U.S. Attorney's Office
450 Golden Gate Avenue, 10th Floor
San Francisco, CA 94105

RE: <u>United States v. Allied Corporation, et al.</u>, Civil No. C-83-5898 FMS (N.D. Calif.)

<u>United States v. Chemical & Pigment Co., et al.</u>, Civil No. C-83-5896 FMS (N.D. Calif.)

Dear Paul:

On 13 November 1991, the Court entered the seventh and last of the consent decrees in these cases. Entry of the seven consent decrees resolves all of the United States' claims against the fourteen defendants and the defendants' counterclaims against the United States. Some cross-claims between defendants are still pending though. Judge Smith has scheduled a status conference on 11 February 1992, at 2:30 p.m., to address the status of the cross-claims.

We compiled the seven consent decrees and the orders by which the Court entered the decrees in the enclosed three-ring binder for your reference. Several of the consent decrees provide that the Court retains continuing jurisdiction of the matters (to resolve any issues that arise in the implementation of remedial action by the defendants on properties adjacent to the Naval Weapons Station, Concord). Because of this, I suggest that you retain the notebook for your reference.

I estimate that the seven decrees will provide the Navy with relief worth approximately \$17.3 million dollars. Under the terms of the decrees, the Navy will recover cash payments of \$11,709,629 and the owners of properties adjacent to the station will carry out remediation on their properties/worth approximately \$5.6 million.

Under the terms of one of the decrees, the Navy will pay Atchison, Topeka, and Santa Fe Railway Company \$500,000. ATSF will also recover \$1,250,000 from five of the other defendants.

Paul Locke 4 December 1991 Page 2

I appreciate your assistance in wrapping up the settlements. Let me know if you have any questions.

Sincerely,

Senior Trial Attorney Department of the Navy Office of the General Counsel Litigation Office c/o: Acumenics Research & Technology

90 New Montgomery, 5th Floor San Francisco, CA 94105

(415) 777-0283

Enclosure

Copy furnished (without enclosure):

Jon Mueller, DOJ



DEPARTMENT OF THE NAVY OFFICE OF THE GENERAL COUNSEL WASHINGTON, D.C. 20360-5110



11 December 1991

LITIGATION OFFICE

Mary Gillespie, Esquire
Office of Counsel
San Francisco District
U.S. Army Corps of Engineers
211 Main Street
San Francisco, CA 94105-1905

Re: <u>United States v. Allied Corp., et al.</u>, Civil No. C-83-5898 FMS (N.D. Calif.)

United States v. Chemical & Pigment Co., et al.,
Civil No. C-83-5896 FMS (N.D. Calif.)

Dear Mary:

On 30 July and 21 August 1991, I sent you copies of the seven consent decrees we negotiated in these cases.

I am enclosing copies of the orders by which the Court entered these seven decrees. I suggest that you match each order with the consent decrees to which it relates and place it behind the appropriate tab in the notebook I sent you on 30 July 1991.

If you have any questions about this, please contact me.

Sincerely,

J. MARTIN ROBERTSON
Senior Trial Attorney
Department of the Navy
Office of the General Counsel
Litigation Office
C/o Acumenics
90 New Montgomery, Fifth Floor
San Francisco, CA 94105
415/777-0283

Enclosures

1.



DEPARTMENT OF THE NAVY OFFICE OF THE GENERAL COUNSEL WASHINGTON, D.C. 20360-5110



11 December 1991

By Federal Express

Michael Rugg State of California Department of Fish & Game P.O. Box 47 Yountville, CA 94599

RE:

United States v. Allied Corporation, et al., Civil No. C-83-5898 FMS (N.D.

Calif.)

United States v. Chemical & Pigment Co., et al., Civil No. C-83-5896 FMS

(N.D. Calif.)

Dear Mike:

On 13 November 1991, the United States District Court for the Northern District of California entered the seventh and last of the seven consent decrees memorializing settlements between the United States and the fourteen defendants in the above referenced cases.

As you know, the Department of the Navy selected a final remedial action plan for Parcels 572, 573, 574, 575, 576, 579D, and 581 on the Naval Weapons Station, in Concord, California, under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, on 6 April 1989. The Western Division, Naval Facilities Engineering Command, has nearly completed the design of the remedy for these parcels.

Entry of the consent decrees will allow the Navy to carry out the cleanup on these parcels next year. Under the terms of the decrees, the defendants in the litigation must pay the Navy approximately \$11.7 million, which is seventy percent of the estimated cost of carrying out the remedial action on these parcels. In addition, under the terms of the decrees, the five defendants that own contaminated properties adjacent to the contaminated parcels on the station must clean up their properties in coordination with the cleanup on the station. Two of the decrees require Allied-Signal, Inc., and Chemical & Pigment Company to clean up portions of their industrial facilities adjacent to the station. Three other decrees require Sacramento Northern Railroad Company; Atchison, Topeka, and Santa Fe Railway Company; and Southern Pacific Transportation Company to clean up their four rights of way that transect the station.

Michael Rugg 11 December 1991 Page 2

If you have any questions about this, please give me a call.

Sincerely,

J. MARTIN ROBERTSON
Senior Trial Attorney
Department of the Navy
Office of the General Counsel
Litigation Office
c/o: Acumenics Research & Technology
90 New Montgomery, 5th Floor
San Francisco, CA 94105
(415) 777-0283

Copy furnished:

Captain Richard L. Owens, WPNSTA Concord Captain Robert Moeller, WESTDIV